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AUTHENTIC AND IMPARTIAL COPY ¹⁷

OF THE

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O F

SIR HUGH PALLISER,
VICE-ADMIRAL OF THE BLUE,

Held on Board his Majesty's Ship the SANDWICH,
in PORTSMOUTH HARBOUR on Monday, April 12,
1779, and continued by several Adjournments to
Wednesday the 5th of May, 1779.

Taken in SHORT HAND, by a Person who attended
during the whole TRIAL.

And published by Order of his FRIENDS.

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MDCCLXXIX.

FEB 11 1927

C O N T E N T S.

	Page
O PENING of the Court — —	5
Names of Officers who composed the Court	
Marital — —	5, 6
The Examination of Admiral Keppel —	7
Cross Examination — —	26
Rear-Admiral Campbell — —	29
Mr. Lucas, Surgeon of Defiance —	33
Rear-Admiral Campbell's Cross-Examination —	44
Hon. Capt. Walsingham — —	47
Cross-Examination — —	50
Capt. Faulkner of the Victory — —	51
Mr. Rogers, Admiral Keppel's Secretary —	60
Capt. Marshall of the Arethusa —	63
Cross-Examination — —	70
Mr. Graham, Purser of the Arethusa —	72
Hon. Capt. Windsor of the Fox —	73
Cross-Examination — —	78
Lieut. Bertie of the Fox — —	79
Cross-Examination — — —	80
Capt. Jarvis, of the Foudroyant —	81
Cross-Examination — —	87
Admiral Sir Robert Harland — —	88
Hon. J. Leveson Gower of the Valiant —	93
Capt. Macbride of the Bienfaisant — —	95
Capt. Prescott of the Queen — —	97
Cross-Examined — —	101
Sir Charles Douglas of the Stirling Castle —	102
Cross-Examined — —	106
Capt. La Forey of the Ocean — —	109
Cross-Examined — — —	114
Capt. George Berkley, late first Lieutenant of the Victory — — —	115
Cross-Examined — —	117
Mr. John Madgson, Master of the Victory —	118
Cross-Examined — — —	123
Capt. Stoney, late second Lieut. of the Victory	124

	Page
Hon. Lieutenant Lumley — —	127
Cross-Examined — —	128
Capt. Bazely of the Formidable — 129, 199,	216
Cross-Examined — —	202
Mr. Forfar, Master of the Formidable —	146
Sir Hugh Palliser's Defence — 152,	265
Sir Thomas Pye — — —	194
Sir William Burnaby — — 197,	230
Cross-Examined — — —	231
John Bickerson, Carpenter of the Formidable -	205
Capt. Kinneer, late Lieutenant of the Formidable	206
Lieut. James Dickenson, second Lieut. of ditto	215
Lieut. John Hills, fourth Lieut. of ditto —	216
Cross-Examined — — —	220
Lieut. Waller, of ditto — —	223
Cross-Examined — — —	225
Robert Haven, Gunner of the Formidable —	228
William Adams, Gunner's Mate of ditto —	229
Lieut. John Beard, of the America —	232
Cross-Examined — — —	ibid
Mr. Richard Searle, Master of the America —	235
Cross-Examined — — —	ibid
Lieut. John Inglefield, of the Robuste —	238
Cross-Examined — — —	239
John Brand, of the Formidable —	240
Thomas Constable of ditto — —	ibid
Mr. Thomas Read, Master of the Queen —	241
Cross-Examined — — —	244
Mr. Rob. Hoggart, Midship. of the Formidable	247
Cross-Examined — — —	248
Mr. Daniel Guerrin, Midshipman of ditto —	250
Cross-Examined — — —	251
Mr. William Rhodes, Captain's Clerk of ditto	252
Cross-Examined — — —	253
Robert Spence, of the Stirling Castle —	256
Mr. George Antony, Captain's Clerk of ditto -	257
Hon. Keith Stewart, Captain of the Berwick -	260
Sir John Hamilton, Captain of the Hector -	262
Lieut. Winckworth of the Formidable. —	264
Sentence of the Court — — —	273

Monday, April 12, 1779.

A gun was then fired from on board the port Admiral, as a signal for all the Captains in port, or at Spithead, to come on board, which being compleated about ten o'clock, they all assembled in the great cabin, and the dates of the commissions being read, the following were selected, being the oldest Captains present.

P R E S I D E N T,
VICE-ADMIRAL George Darby, Britannia.

B

REAR-

REAR-ADMIRAL, Robert Digby, † Namure.

CAPTAINS. Sir Chaloner Ogle, Resolution.

R. Kempenfelt, Victory.

Joseph Peyton, † Cumberland.

William Baine, Alexander.

Mark Robinson, † Shrewsbury.

A. Duncan, * Monarch.

S. Cranston Goodall, † Valiant.

James Cranston, * Defence.

Robert Linzee, Surprise.

John Colpoys, Royal George.

G. R. Walters, Amelia.

Captain Peyton desired to know the reason why Captain Bennet, of the Lennox, did not attend, as his ship was in the harbour.

The Judge Advocate arose, and read a note from Captain Bennet, desiring to be excused, as his health would not permit him.

Mr. Thompson, Surgeon of the Lennox, was called, and asked by the Court, whether Captain Bennet was so ill as not to be able to attend; he replied he was, upon which his apology was accepted.

Admiral Digby then moved that the Court be cleared, which being done a very warm debate ensued about the propriety of the witnesses or members of the late Court Martial sitting on this, which being settled, the audience were again admitted, and the members sworn.

The Judge Advocate then read the order of the Admiralty for holding a trial on Sir Hugh Palliser, which set forth, that from the late Court Martial held on Admiral Keppel, there appeared a disobedience of orders, and other instances of misconduct; and directed them to enquire into the same.

(Signed)

SANDWICH, BULLER, LISBURNE, and MULGRAVE.

The

Those marked thus † were witnesses on Admiral Keppel's trial.

Those marked with * were members of the Court Martial.

The Judge Advocate added, Here are the original minutes of Mr. Keppel's trial, would you have recourse to the particular criminating parts, or would you chuse to consult upon the mode of enlarging upon the business ?

The Court was again cleared, and deliberated a considerable time on the above—being again opened, Sr Hugh Palliser addressed the President and Court in the following words,

“ Mr. President, and the rest of the members of this honourable Court—There is a matter which I beg leave to mention at the outset of this trial.—With a view to increase the prejudices against me, it has been insinuated, that this enquiry is intended to revive the consideration of Admiral Keppel's trial, but I solemnly declare it is my own vindication which I have solely in view ; therefore, during the course of the trial, the questions which I may be under the necessity of asking, will have no respect to Admiral Keppel, nor to any person else, excepting myself.”

Admiral Keppel. Mr. President, before I take the oath, may I beg to be allowed to say a word or two.—Observing, from the list of witnesses, my name stands the first for the crown, I beg leave to observe, I am far from being a voluntary witness before this Court;—I stand in a very painful situation, and the evidence that is to be given, I hope, will never go into the world, as carrying rancour or revenge from me, against the Gentleman whom you are about to try—The evidence which I shall give, (but I had much rather be excused) shall be, to the best of my recollection ; I cannot say to the questions that will be asked me, only yes and no, as a witness ought to do ; they are so intermixed with the business of the day, —they will carry my thoughts of that business along with it ; and under these circumstances I wish

not to be examined at all.—I am sure there will be witnesses sufficient to speak to the matter you want to be informed of.—I shall say more—if the Vice-Admiral of the Blue wishes me to stay all the time, I shall do it most cheerfully, and say every thing I know, without equivocation, and strictly according to my oath.

Sir H. Palliser. Mr. Keppel is not called by me.

The Court was again cleared.—On the re-admission of the audience, the President thus expressed himself:—"The Court is of opinion, that it is not in their power to excuse Mr. Keppel, but will be glad to give him as little trouble as possible."

Admiral Keppel. "I am under the direction of the Court."

He was then sworn.

Judge Advocate. Please to give an account of the proceedings of the fleet under your command on the 27th and 28th of July, so far as they respect the conduct of Sir Hugh Palliser, Vice-Admiral of the Blue.

Admiral Keppel.—It is a question, which, if my answer cannot be dispensed with, I shall give as clearly as I possibly can.—My observations that day were taken up every part of it, in looking, and endeavouring to conduct his Majesty's fleet to the best of my abilities. For orders which I gave—for words which fell from me—I must refer to those officers who had these orders, and heard those words. It is morally impossible for an officer who has so large a command, to remember every signal which he made, every word which dropped from him, or every order that he gave;—it is almost as impossible, as it would be for me to repeat the minutes of the Court Martial now before you. But I shall answer every question that shall be asked without equivocation; and as I said before, I must

must make some observations, because in relating a narrative of all that passed, I may not recollect; and upon my cross examination be found deficient; those errors that I make, I must therefore have great allowance for. There are many parts of that day fresh in my memory; but giving a narrative upon oath, is a very difficult thing; and every little tittle respecting every ship which I then took notice of, makes it very difficult for me; but out of that if you can form any questions, I will answer them. I hope I don't appear equivocal in this—if I had been an accuser, I should have considered these; but, thank God, I am not an accuser, but here I am at your disposal.

President. We only want that part of the business which is relative to the conduct of the Vice-Admiral of the Blue.

Admiral Keppel. If that is the question, when shall I begin?

Here Captain Colpoys moved for the Court to withdraw instead of clearing it of the audience, which was complied with.

The Court returning—

President. Mr. Keppel, the Court is of opinion, that if the difficulty remains that you felt yourself under of recollecting the circumstances minutely relative to the behaviour of Sir Hugh Palliser, on the 27th of July, that they will proceed to questions; but still wish you to give such information as is in your power.

Admiral Keppel. I would rather have the questions put.

Judge Advocate [with the questions in his hand.] Inform the Court what number of ships were in the Vice-Admiral's division when you were in fight of the enemy?

A. Ten.

Judge

Judge Advocate. What number of ships did you order to chase the enemy?

Admiral Keppel.—To the best of my recollection six or seven; it was intended for nearly the whole; but in regard to that I shall explain myself. We were in a long pursuit of the French fleet, and consequently much fatigued: Admiral Campbell was my first Captain, in whom I reposed the greatest confidence on account of his skill, and that confidence was never thrown away at any time.

I gave him general directions to call and bring up ships at all times that were at any improper distance from me; and, as I wished to have rest, to call me up at all times, in case of any accident in the fleet, or any thing relative to the enemy. In the morning of the 27th of July, I don't recollect the hour, he came and called me up; the first question I asked him, was—Can you tell me any good news of the French fleet?—He said—They are farther from us than they were yesterday;—but I have ordered several ships of the Vice Admiral of the Blue's division, being under too easy sail, to chase to windward—"Have I done right?" I answered, certainly right, and to bring all the ships as near as he could. I jumped off the bed, and looked at the French fleet, and found them as he had told me. There was no idea of bringing them to action at that time. The Vice-Admiral of the Blue had at that time his mainsail up, and was to leeward of me.

Judge Advocate. Did it appear to you on the morning of the 27th of July, that Sir Hugh Palliser did all in his power to bring the Formidable, and the ships in his division forward to engage with the enemy?

Admiral Keppel. It appeared to me that the Formidable, as the other ships did, carried all the sail she possibly

possibly could to come into action; every other gentleman was doing the same.—You see why I answer in this manner; I had called in the ships of the Vice-Admiral, consequently he was coming on by himself to close as well as he could.

Judge Advocate. Did it appear to you, during his engagement with the enemy, that he behaved as an officer should do of his rank, and station, in the fleet?

Admiral Keppel. At the time I observed the Vice-Admiral, he seemed to be coming along just as well as any other before, or after him, doing his duty. He did his duty as a flag officer; I do not mean to narrow the question.

Tuesday, April 12.

The Court being assembled, and having considered of the further questions they intended to ask the witness, the audience was admitted, and the trial was resumed.

Judge Advocate. When you came out of action, after passing the rear of the enemy, did you make any signals?

Admiral Keppel. After I had passed the rear of the French fleet, my first business, as Admiral of the English fleet, was to look and see where all the ships were; it was not immediately that I could see, the great fire and smoke (though it was clear in the morning) made it some time before I could see where the ships were. As soon as the smoke cleared away, the first thing I saw was the Vice Admiral of the Red coming, as it were, to weather me, and coming along in such a manner which made my heart warm. The other ships looking towards us were damaged, but there was no masts nor sails gone; that being their situation, it did not occur to me in a moment what was to be done, but it did in a minute. I made the signal for the fleet
to

to wear, which was to lay their heads to the enemy. The signal could not be executed by the *Victory* herself; I believe it would have been unsafe for her then; the other ships being then so near her, she could not then have worn sooner than she did; but she might have done it about seven or eight minutes sooner, if it had not been for the circumstance I have mentioned. It was about nine minutes (I cannot be certain as to minutes) but I think the signal for wearing was up about ten or twelve minutes. The natural preparations for ships to wear were made. I am not sure if the signal for battle was hauled down before I wore, or after. As soon as our heads were to the enemy, I am sure it was hauled down. The signal was then ordered by me for the line of battle a-head;—for the minute signals and orders I gave, I must beg leave to refer to those gentlemen who took minutes, who received orders for signals, for really I cannot be precise; for I am sure a Commander cannot recollect every order he gave, or every signal which was made; I took no minutes, I took nothing down that day; I trusted to those people about me, and I believe they were particular; after making the signal for laying our heads to the enemy, I said, where is my fleet now? The ships of the Vice-Admiral of the Blue's division were passing along, none of them attempting to place themselves a-head of the *Victory*, which was their proper station; the reason why they did not come in was very obvious, their braces and bowlings were cut away. When I am stating this, I do it as a matter of fact, without faults; they passed me all. The Vice-Admiral of the Red was first in the action, he passed me on the same tack going towards the enemy.—The signal for the line of battle being out, it was natural for me to look if my fleet was formed—it was not—I saw no probability of its being formed in the manner I could have wished. When
I wore

I wore to the enemy. I thought it would have been a proud day for England.—The signal for the line, that was to call different ships, was out; I presume they came as fast as they could; I blame nobody: the blue division came out last; and they wanted more time than the red; the centre division wanted not so much; the red less than any of us. I understand the question was, what signals I made?—I made the signal to wear, then a signal for the line of battle a-head. The Victory was ready first to wear. Any other signals after that were all, from first to last, within the space of about forty minutes. I never looked at my watch all day long. The Formidable was the last ship which passed me of the Blue division.

Judge Advocate. How long was the Victory on the larboard tack?

Admiral Keppel. To answer that question, I would rather refer to them who made the minutes, but for the time I cannot say: she was upon the larboard tack, till I thought it no longer proper for me to bear the name of a Commander of an English fleet not to have altered it—She was upon the larboard tack till I saw the enemy forming upon the starboard tack; their line formed, mine not formed;—then I made the signal for wearing;—if any questions are asked relative to that, I am very clear; but I am not certain as to the particular time, or length of time. As I said before, I must refer to those who were about me, who took minutes.

Admiral Digby. I beg leave to ask if you made any other signal after that for wearing; when you was on the larboard tack, what was the next signal?

Admiral Keppel. There were no other signals but for frigates; I will avoid as much as I can going into narrative, but I must narrative upon your question, as it is so mixed with the whole business.

Admiral Digby. I only mean the signal immediately after the signal for the line of battle, on the larboard tack?

Admiral Keppel. There was no signal but that to wear again. The first signal to wear, the next for the line of battle, and the third to wear again.

Judge Advocate. What was the situation of the Formidable at that time, and did she obey those signals?

Admiral Keppel. What does the Court mean?

Court. Did the Formidable obey the signal, when the Victory was on the larboard tack?

Admiral Keppel. That is a very nice question, which I shall be very delicate in giving an answer to, in the situation I stand—I cannot say, I never saw her upon the larboard tack, though I were to be put upon the torture; but upon a former occasion, others have said, they saw on her on that tack, and it might be so.—I saw her come to the Victory, pass the Victory, and the signal for the line of battle up; it was not for her to pass the Victory but to stand a-head of her.

Judge Advocate. Was the Vice-Admiral of the Blue's not obeying the signal the cause of your not attacking the enemy on the larboard tack?

Admiral Keppel. Certainly not: the enemy were in a body, in a cluster, as it has been called, drawing their ships out of that body one by one: I have seen the French form a line before, and they did it exactly the same way. When Lord Hawke attacked them, it was the precise way they took. Mons. Conflans formed it exactly the same way; it's not so long since that I should forget it. My seeing them, and knowing that they would form their line in this way; and at that moment seeing the incapacity of the English fleet to form their line, I had not the English fleet to throw away, but to beat the French fleet; therefore soon after I made the signal to wear: the Formidable not obeying it did not hinder me—I manœuvred to the best of my poor abilities—the Formidable was doing what I should have done, but was doing it with-
out

out my order. I have talked to experienced officers, and I am ready to tell the Court, and all the world, if I could have formed my fleet I would have weathered them, I would have carried it on in the line; if I could not weather them, I would have put my stern to them. The Vice-Admiral of the Blue passed me but that moment, though if he had stood where he was a-head of the Victory I could not have attacked the French fleet; for there was not a ship either of his or my division formed a-head of the Victory; they were unable at that time.

Judge Advocate. Did the Formidable appear to you to be disabled, or in such condition that the Vice-Admiral of the Blue could not have obeyed those signals?

Admiral Keppel. I saw no appearance of the Formidable's being disabled any more than the Victory, unless indeed that the latter was obliged to unbend her topsails. I saw no disability in the Formidable at all at that period.

Judge Advocate. Did the Formidable obey, in repeating those signals?

Admiral Keppel. I did not see her repeat them, and yet she might have hoisted a pendant for wearing for aught I know; but I neither saw it, nor was it ever reported to me that she had done so.

Judge Advocate. What was the next general signal, after that for the line of battle, when upon the larboard tack?

Admiral Keppel. I gave a direction where there was no signal, that is no applicable signal. The fleet as described before, were refitting their braces and bowlings as before mentioned. I looked at what was to be done. I saw the Vice-Admiral of the Red looking as if he wished to engage. I sent to him; I called the Captain of the Arethusa frigate; (the

31st article I thought not applicable, but I did not look in the book) and told him to go to Sir Robert Harland, and tell him to lead on, and form a-head; this was not a public signal, but a public order: before the frigate could go, I reversed the order; I looked at the French fleet, and thought they had an opportunity. I then ordered Sir Robert Harland to form a-stern of the fleet to protect it; he obeyed.—After that, the next signal, as I said before, was to wear; these were general orders. When the signal for wearing was up, it was always up, except about nine or ten minutes, I got upon the starboard tack, and hoisted the signal for the line. I passed the same ships that I passed before. The Vice-Admiral of the Blue was upon the same tack with the Victory, the starboard tack: the Victory, to the best of my judgment, was going with her main sail not quite bent, about three points to the wind: it was done, however quickly—they were fine fellows, and it was done in a minute. We went to succour three ships, which might have been very ill treated, if the French had ventured to do it.—I left the Vice-Admiral of the Blue to fall a-stern a little,—for most of his own division were standing too close with him, as he might think proper; but when they got to him again, upon the same tack, I did not observe that either he, or they come into the line. The signal was made again, a blue flag on the mizen peak; some of the officers, I think Admiral Campbell, said, “They do not see it, shall we haul down the signal for the line of battle?” which was done. The Vice-Admiral of the Blue kept there; but at that moment, somebody said, “They wear away.” The signal for battle was hoisted up again in the space of nine or ten minutes; that I think was about half after three; they told me so, for I never looked at my watch.—Minutes grew hours

hours : I was no longer uneasy about the three ships ; they could not get into their station in a moment on account of their damaged braces and bowlings : they began to form a-head, and not a-stern. Sir Robert Harland had executed the order I had given him most ably ;——it had all the effect I meant it to have——seeing him forming, the French fleet run away ; but the day was going. I heartily wish I had been excused from giving the opinion I am obliged to give. I was worn out ; my patience gone—I believe to an indiscretion : I thought Sir Robert Harland had done his duty ; it was time to send him away ; he was in my wake a good way a-stern. I called myself, (and Admiral Campbell was very quick in giving orders to the frigates) for two frigates ; one was to go to Sir Robert Harland, and for the Fox to go to the Formidable, for I certainly wanted nothing but the Vice-Admiral of the Blue coming down to have fought the French fleet : I had day light ; they must have fought, or have run away in *day-light*, as they did in the *dark*. I am very sorry I am obliged to give this evidence, but it is evidence that arises from truth. The signal was again hoisted on the mizen peak ; the exact minute I do not recollect, but I believe the Fox was gone, or then going to the Formidable at that time. When I say the Fox was going, it is a matter of belief, for I don't speak for certain.

Judge Advocate. Did the Formidable bear down in obedience to those orders.

Admiral Keppel. Never.

Judge Advocate. What was the position of the Vice-Admiral of the Blue from five till seven o'clock ?

Admiral Keppel. The Vice-Admiral of the Blue from five till seven in the afternoon seemed to me to be governing herself as much as she could to the wind,

wind, keeping the same bearing. She was without her fore-top-sail all that time, and a great while before it. If I were to reckon upon time, it is hardly to be mentioned; it was a matter of four hours. She was with her main, and main-top-sails set; we had her mizen-stay-sail, or mizen-top-sail, I don't recollect, but I rather think stay-sail. She did not fall a-stern of the Victory, but rather went to windward of the Victory, which under the little sail the Victory carried, she wore her helm a little to lee; which she generally did under so little sail, and in a swell as there was then. I never set the Formidable by compass; I never desired any body to take minutes of the Formidable, or of any other ship in the fleet; I had no intention of taking minutes to cover myself on that important day, but to do every thing, fairly, honestly, and kindly. I went to the Captain's couch near the midships of the stern of the Victory, but could not from thence see the Formidable. I was obliged to go into the gallery to see her, the Victory going two knots and two fathoms. But as to setting her, I never set a compass, nor ever desired one; but I gave general directions, those who took them will appear before you.

Judge Advocate. At what time between five and seven o'clock did the Red division get into its station?

Admiral Keppel. The Milford, that had orders for Sir Robert Harland to take possession in the van, was called between four and five; I cannot be sure, but as soon as he had orders he made all the sail he could carry. From the moment Sir Robert Harland made sail, he was in such a situation that I could have made use of him. There was more to be done than merely obeying the signal; I was to windward of the French fleet; the moment I had seen the Vice-Admiral of the Blue bearing down with his division

vision, I had an operation in my head immediately. I was very clear what ought to have been done, and knowing that, I know what I would have done. The Vice-Admiral of the Red got into his station about half after six I suppose; but I don't love supposing, as it's not fit for evidence, for I can't say positively.

Admiral Digby. What answer did the Fox bring to the message you sent to the Vice-Admiral of the Blue?

Admiral Keppel. The Fox received directions to proceed to the Vice-Admiral of the Blue; directions were given by Admiral Campbell distinctly, and repeated by myself as I said before: the particulars I don't recollect; it was delivered in warmth; expressions perhaps not so civil as I could wish. Admiral Campbell received my orders distinctly, he remembers what they were: all that was said I must refer to the officers, for I never received any answer at all from the Fox.

Judge Advocate. What ship did you appoint to repeat signals?

Admiral Keppel. The *Arethusa*, Captain Marshall, he alone repeated them; I could not spare other ships, as I had not frigates enough for the fleet: we wanted them that day exceedingly.

Judge Advocate. Were the signals repeated from on board the *Arethusa*?

Admiral Keppel. I cannot say positively, or I would, but I know nothing to the contrary;—but I'll say this, and I appeal to any officer of the fleet who knows what the repeating of signals is, if ever they saw so quick, and able a repeater of signals: from that I conclude that he did repeat them. I have seen the experiment tried (I don't say it as to this) but on a watch being taken out, it was found
that

that the signal was repeated in the same time the list was made. I don't know whether this particular signal was repeated or not.

Judge Advocate. Was the Formidable's situation such, as to be able to see these signals on board the Victory, or the Arethusa?

Admiral Keppel. What time does that allude to?

Court. Between five and seven o'clock.

Admiral Keppel. Most undoubtedly she could not fail seeing them.

Court. From the time that the fleet was on the starboard tack, could she see them?

Admiral Keppel. Certainly; from that time till it was dark she must have seen them. There was a time when the Blue flag was up, that they might have puzzled each other, but they all went to the same sense, the same meaning.

Judge Advocate. Were there any of the Vice-Admiral of the Blue's division in their station in the line about six o'clock, and how many?

Admiral Keppel. It is a question of great nicety; the matter is what they thought their station. If I were to give a direct answer that the Victory's wake was their station in the line,—there were none. At the time you speak of, they were with the Vice-Admiral, who commanded that division, except the Ramilies and the Robuste, which were astern, refitting their rigging;—they were a great object to me;—I got up to secure their junction. “If they were in their station?” It is a question of such nicety that I cannot give an answer; but that they were not in a line of battle a-stern of the Victory, that I am sure none who saw them will say. At five o'clock there was no ship a-stern of the Victory, but the Foudroyant, the Prince George, and the Bienfaisant; these could have been brought in in a minute; but I liked
their

their situation, and left them there till five o'clock; when they took the other situation no operation could be done quicker. The Vengeance was a-stern; she was repairing her damages, being much hurt, so that I looked but for little good from her; her people was not so good as those of the ship I had the honour to be in; but to say that the ships were not in their station is a question I cannot answer, it is a nice point of discipline:—to say they were not in their station, is a harsh expression; but to say they were not in the line of battle, I can with a great deal of confidence. I don't like this question to go off, without adding, that before I sailed the second time, I decided that point; for I gave general orders that the line should be taken from the center; from that moment nobody had a choice; I did not mention this to any officer whom I thought it might affect. This was from a delicacy, and a desire I had not to put those who had been gallant in the fleet; if the order was a reprimand, wherever it touched, it was surely the gentlest that possibly could be; but I thought that such another accident might be fatal, therefore I thought it my duty to make it known, that all in the fleet might know what I expected them to do.

Judge Advocate. When the Vice Admiral of the Red made sail with his division, did he give time enough for the Vice-Admiral of the Blue to take his station?

Admiral Keppel. I never understood, that when they were in, the Red could prevent the Vice-Admiral of the Blue from taking his station. In my opinion it had nothing to do with the Vice-Admiral of the Blue's wearing at all. At five o'clock the orders went separate ways; the Milford went to the Red, the Fox to the Blue division. Whatever one received the other must, they went off at one time; if it could have pre-

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vented him, I would have sent the Vice-Admiral of the Red away. The great vacuum between the Red and Blue, as appeared by the Foudroyant, was a great space indeed. To say that the Red took the exact place of the Blue, is a very nice affair; I think it strict justice to say, that half an hour or an hour should be allowed to the Vice-Admiral of the Blue, who had a right to more time than any other part of the fleet; as they came half an hour after the centre out of the line of firing they might be a little more damaged; but after that, I thought there was no excuse, for he had full time. With credit to myself, country, or the British flag, I could not wait any longer.—The Vice-Admiral of the Red was no impediment; for the same order that went to the Vice of the Blue, was given to the Vice of the Red; when I say this, I do not speak positively, but I have no doubt of it.—It was five o'clock when the message was sent by me.—If the Vice-Admiral of the Red was an impediment for the Vice of the Blue to form, that impediment was removed, because the orders got to the Red as soon as the Blue; and the former moving out of the way, must be seen by every body;—I saw it.—It was my duty to be upon the deck, and there were but few minutes that I was off.—I think therefore there was no impediment at any time. The Vice-Admiral of the Blue might have his reasons for not coming down; I don't enter into that, but they were not in the way, for six or seven ships of the Red went out of the way. I sent the message directly to the Vice-Admiral of the Red: it might have been six or ten minutes before the message was given to the Fox, but there was no impediment at any time in my opinion.

Judge Advocate. When the Red division got into its station, as you suppose at six o'clock, how did the Blue division stand as to the Victory?

Admi-

Admiral Keppel. They might be upon the lee beam a long random shot, or about two miles.

Judge Advocate. Did you make any signal after seven o'clock, or during that night relative to the fleet?

Admiral Keppel. That was a particular moment: At seven o'clock I made a signal for every ship of the Vice-Admiral of the Blue's division, except the Formidable; and that signal remained with that for the line of battle I believe all night. It remained while I was upon deck, which was till dark, and then I went down. I gave no orders to take it down, and therefore believe it was up all night. I made no signals whatever after seven o'clock; no night signals. I never practise night signals, I know the difficulty attending them.

Wednesday, April 14.

Admiral Keppel called in.

Q. At what time, or nearly so, were the ships of the centre division formed in a line of battle in the afternoon?

A. When I was standing on the starboard tack to the southward, (except the *Courageux*, who was to leeward repairing damages, and the *Vengeance*, who was a-stern of the line) the centre division was completely formed by about half past three, or by a quarter before four at furthest. The *Courageux* had been much distressed, making much water, and got in by about five o'clock. The *Vengeance* could not get into the line at all, although she constantly tried, and kept her head towards me, trying with all the sail she could get; but indeed she was so much hurt, I did not expect it of her. There were two ships of the Red division forward a-head, but I did not know their names then; therefore I don't know whether it comes right from me, now I am on oath. Their names, I have been since informed, were the *Berwick* and the *Monarch*.

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Q. Do

Q. Do you know of any thing more relative to the conduct of Sir Hugh Palliser, during the 27th or 28th of July, either before, in, or after the action, which is necessary for this Court to be informed of?

A. I must beg the Court will indulge me in not giving an answer to that question. It is a question I should be very loth to answer. If I had been the accuser, which, thank God, I am not, I should have thought it my duty to point out to the Court every thing I knew. However, the Court are in possession of facts by the late trial. I have not the Admiralty orders about me for holding the trial; therefore I cannot say whether they require me to deliver upon oath every thing I know; if they do, I most certainly will comply; but at the same time beg leave to say, it is much against my feelings. There are many things which would hurt me much to relate. I stand in a very critical and disagreeable situation—a situation such as, I believe, no man ever stood in before—giving evidence against a gentleman who brought me to trial; therefore, Gentlemen, I do most earnestly intreat you that I may be excused.

Court ordered to be cleared.

[In giving this speech, the tears flowed from the witness, and it was with difficulty he could proceed.]

The Court was opened after about half an hour's debate, and the President spoke as follows:

Sir, You will inform the Court of every thing that fell under your observation, which was reprehensible in the conduct of Sir Hugh Palliser.

Sir Hugh Palliser arose, and addressed himself to the Court as follows:

Mr. President, I request that Admiral Keppel, in answering that question, may be obliged to speak from his own knowledge, and not from hearsay: had he been

an accuser, he would have had a right to speak every thing against me, but in the present case I trust he has not. I do not speak this from any consciousness of guilt. I should have no objection to a thorough enquiry into my conduct; but as the Admiralty have confined their orders to the 27th or 28th of July, I am not prepared for a defence to any other part.

Sir Hugh Palliser then delivered in the paper from which he spoke.

Admiral Keppel. I am apprehensive, that from the extent of the answers given by me, there may be some little contradictions; however, I protest there have been none wilfully; neither do I know there are any; but if there are, I trust the Court will indulge me in leave to correct them. Confident I am, that if there is the least Article against the Gentleman who is now your Prisoner, I shall be happy to clear it up.

[Admiralty order for trial read.]

Sir Hugh Palliser. I beg the paper I delivered in may be inserted in the minutes.

The Court withdrew. On their return, the Judge Advocate spoke as follows:

The Court have ordered me, Sir, to acquaint you, that they are of opinion your paper cannot be entered upon the minutes.

Question again proposed to Admiral Keppel. "You will inform the Court, &c."

Mr. President. My examination has been so long, and as I have never taken any minutes of it, I protest I scarce remember how much I have said; but I am ready to say that in passing along the French line he has had his praise from me very fully; likewise in my letter to the Admiralty Board, which has been made use of in the world very much against me, I take it. I don't know I cannot charge my memory with ever seeing him obey any one signal, or the orders I sent him,

him, after my passing the French line. This is very general, but I am obliged to say it. I conclude the prisoner will press me in parts where he thinks he has done his duty, and I shall be happy in being of any service to him where it corresponds with strict truth; but as the question goes to the 28th, it is necessary to say something more, that after dark of the 27th of July I knew of nothing farther respecting Sir Hugh Palliser.

Cross-Examination by Sir Hugh Palliser.

Q. Did not I come on board the Victory on the 29th of July, two days after the engagement?

A. I don't know the very day, but it was a day or two after the engagement.

Q. Did you then signify a disapprobation to the Vice-Admiral of any part of his conduct?

A. I must answer I did not; but that did not take away what I had seen.

Q. Did you not shew me a draught of your letter you should send to the Admiralty.

A. Yes; but that was not the letter I sent to the Admiralty.

Q. In the letter you sent, and the letter you shewed me, was not my name mentioned?

A. Yes.

Q. Did we not converse on that letter you was pleased to shew me, particularly that part which mentions the French fleet being beaten?

A. Probably we did; but according to the oath I have taken, I cannot say we did; yet possibly we might.

Q. I must beg leave to assist the Admiral in his recollection; does he not recollect I said, as I passed along the French fleet, I had observed many of the
French

French ships had slackened their fire, and believed the men did not stand to their quarters?

A. I do not recollect that ever you did; yet I heard, that you said something of that kind to Admiral Campbell, my first Captain, but really to me I do not recollect that ever you did; but I must beg leave further to say, that if ever I had heard it from the Vice-Admiral, there was a moment when certainly I would have taken the advantage of it; that is a plain proof I did not hear it.

Q. I will endeavour to bring another transaction to the Admiral's recollection; did I not say that I had observed the two last ships I engaged appeared to be fresh ships, having no shot-holes in their sails; and I hope the Admiral will repeat what I did say?

A. I really cannot charge my memory with the exact words you said; but I recollect your mentioning something about it, and you did the same to Rear-Admiral Campbell. I am sure if I could recollect I would, but I have had many things to think of. Admiral Campbell is very correct in his notes. I myself never take any notes of conversation; my memory at times is very good; it is necessary it should.

Q. Did the letter you shewed me convey approbation of my conduct?

A. That letter was torn; I did not like it; it did convey approbation of your conduct, the same as it did of every officer in the fleet; it was a general commendation. In passing the line you deserved commendation; but neither that letter, nor the one I sent, went any further; I cannot recollect the precise words, neither do I think it necessary; the letter I sent has been read by all the world; I do not wish in that respect to call back my approbation.

Q. Did

Q. Did either the letter you shewed me, or the letter you sent, confine your approbation to my passing the French line ?

A. I would rather the prisoner would not ask me about the letter ; I had at the time of writing it great struggles with myself—[Interrupted by Sir Hugh Palliser.]

Sir Hugh Palliser. I did not ask for the Admiral's opinion, but answer to mere matters of fact.

Admiral Keppel. I am very glad you stoped me ; I misunderstood you. All the world that can read English can read the letter, and I have no more to say.

Q. Whilst we were at Plymouth, did you observe to me any disapprobation of my conduct on the 27th of July ?

A. If I am obliged to answer I will, though it is much against my consent. I feel myself very disagreeably situated. This Court, unless I give my solid reasons upon oath, cannot be possessed why I did not. I therefore declare, I had my disapprobation of the Vice-Admiral, but did not express it to him.

Q. Did you not while at Plymouth, convey to me a letter from the Secretary of the Admiralty, in which his Majesty expressed his satisfaction of my conduct ?

A. I put the letter into your hands, into the hands of the other Admiral, and of as many Captains as came on board ; it gave full approbation of my conduct in obtaining the victory over the French.

Q. Did not the letter contain an approbation of my conduct ?

A. The letter is on the table, and therefore I may refer you to that letter.

Q. Did not you, before you left Plymouth, write

a letter to the Admiralty, approving of my conduct with the other officers ?

[The letter set forth, that he should be ready to go to sea again as the next day, and should feel great satisfaction in having the ships that had come into port go out with him again, as he had a high opinion of the zeal, courage, and activity of the officers and men, &c. &c.]

This letter is not printed.

A. I cannot answer that question without asserting my reasons. I do say, I do insist upon it, if the letter is produced, I ought to have the liberty of giving my reasons ; there were two officers in my fleet who had been reflected on ; their feelings were delicate ; I thought it a pity to let two brave officers go again to sea with an imputation against their conduct ; one of the officers is now in Court on this Court-Martial, (Captain Peyton) the other (Captain Hood) is on board the ship ; the latter gentleman has been much traduced in the news-papers ; his feelings on newspaper accounts were far different from mine. I, therefore, having a high opinion of the courage and ability of both, thought proper to write that letter to the first Lord of the Admiralty, that he might shew it to who he thought proper, or publish it to the world ; it was couched in general terms ; I did it to reconcile them for the good of the service ; that was my reason—before I sent the letter, I sent a copy of it to the Captain ; if I did not shew it to you, it was through mistake.

Rear-Admiral CAMPBELL called in.

Order for holding the Court read over to him.

Q. Relate to the Court any thing you know relative to the conduct or behaviour of Sir Hugh Paliser, on the 27th or 28th of July last ?

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A. I shall, agreeable to the oath I have taken, answer any question that may be put to me ; but at this length of time, to give a history of Sir Hugh Palliser, I cannot well do ; I will, to the best of my knowledge, answer any thing required.

Q. Give an account of the proceedings of the Vice-Admiral of the Blue, from day-light of the morning of the 27th, until he came into action ?

A. He was on the morning of the 27th in the wake of the Victory, about three miles rather before the lee-beam of the Victory, with the ships of his division about him, some to leeward, and some a-stern ; his main-sail was up, and all the two deck ships with him were under easy sail ; he was considerably more to leeward than he had been the night before ; I was rather surpris'd, and so was every other officer upon the Victory's deck, to see him so, especially as his having his main-sail up was a means of his falling more to leeward. We had the enemy then directly upon our weather-beam, and, as I had the Admiral's orders always to bring the ships under his command as near him as possible, and keep them as much to windward as I could, I therefore ordered those ships of the Vice of the Blue's division, that were under an easy sail to chace to windward ; and as that signal has caused much animadversion, I would wish to know from any other officer what signal was more proper : the signal I then thought, and still do think, was the most proper signal to close the ships ; and certain I am, that if I had not made that signal, the French fleet would have been considerably farther from us. It has been said, that the signal tended to separate them from the center : I still persift it had quite a different effect ; and when the Admiral came upon deck, he approved of what I had done. I did not observe

observe the Formidable afterwards, until just before we came into action, which was about eleven o'clock.

Q. Did it appear to you that Sir Hugh Palliser did all that lay in his power to bring the Formidable into action?

A. I believe he did.

Q. Did it appear to you, after the signal, that during the engagement, he behaved as became an officer of his rank and station in the fleet?

A. I believe he did.

Q. Did you observe the Formidable when she came out of action, and what was her position with respect to the Victory at that time?

A. I do not remember.

Q. Were any signals made by Admiral Keppel, upon the action ceasing?

A. Yes.

Q. What were they, and what purpose were they to answer.

A. A signal for wearing, and the signal for battle being hauled down. The signal for wearing was made immediately on our coming out of action, but we could not wear in the Victory for ten minutes after, because there were some ships on our lee-quarter, which we should have been in danger of running aboard of; and as soon as we had wore, the signal for the line of battle a-head at a cable's length asunder was made.

Q. How long was the Victory upon the larboard tack?

A. About an hour and a quarter.

Q. What hour of the day?

A. Some time before two when we wore, and it was seven minutes after three when we wore from the larboard, to get upon the starboard tack.

Q. Did the Formidable obey, or repeat the signal for line of battle?

A. No, she did not the whole day, neither while we were upon the starboard nor larboard tack, that I saw; she passed us on the starboard, while we were upon the larboard, which was in direct disobedience, so far from obeying; neither did I ever see her repeat the signal for the line the whole day.

Q. Do you think the Formidable, in passing the Victory, could see the signal?

A. It was impossible she could pass her without seeing it, if she looked for it; and it was not the Victory's business to look to her, but she was to look to the frigate that repeated the signals.

Q. What frigate repeated the signals?

A. The Arethusa.

Q. Do you know whether the Arethusa frigate repeated the signals?

A. She did very soon after they were made; it was a part of my duty to look to that. She was upon the Victory's lee-bow, soon after she was upon our weather-beam, which she could not do without the signal flying; after I found she had repeated the signal, I took but little notice of her.

Q. Was there any other signal made to enforce a compliance, or were other means used to convey orders to the Formidable?

A. Yes; when the Victory led down to succour some disabled ships, she led large, and consequently went to leeward; the Formidable kept her wind, and we finding the Formidable not bear down agreeable to the signal, a signal to bear into the wake was hauled down, that the signal for bearing into the wake might be seen more plain.

Q. Did the Formidable obey the signal for ships to bear into the Admiral's wake?

A. She

A. She did not repeat the signal for the line of battle, she repeated the signal for other ships to bear into the wake, by hoisting a blue flag at the mizen peak, but she never obeyed it herself; I watched her with great anxiety.

Q. Were any other means made use of to convey orders to the Formidable?

A. The Fox was sent with directions for him, and the ships of his division to instantly bear down into his wake, as the Admiral only waited for him, and the ships of his division, to renew the action.

Q. At what time did it appear to you that the Fox reached the Formidable.

A. I hailed the Fox about five o'clock, or near that time when I hailed her; I supposed she joined the Formidable in about half an hour.

Q. Did the Formidable obey the orders sent by the Fox?

A. I have already said, and again say she did not the whole afternoon bear down, or make any attempt towards obeying the signal.

Thursday, April 15.

This morning, on the meeting of the Court, they were informed of the violent illness of Captain Cranston, one of the Members. When the audience were admitted, Mr. John Lucas, the Surgeon of the Defence was called in, and examined relative to the state of his Captain's health.

Judge Advocate. What is the complaint of Captain Cranston?

A. A rheumatic complaint in his head and stomach.

Q. Do you think if the Court were to adjourn for a day he would be able to attend?

A. It is impossible; he has a blister on his back, and was obliged to take an emetic last night.

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The Court withdrew, and returned in a few minutes.

Judge Advocate. Mr. Lucas, it is the opinion of the Court that you shall be sworn. The witness being sworn, the following questions were asked by the Judge Advocate,

Q. When was Captain Cranston taken ill?

A. The day before yesterday.

Q. What is his complaint?

A. It appears to me to be a spasmodic complaint in the head and stomach.

Q. If the Court were to adjourn till to-morrow, would he be able to attend?

A. I don't think he could.

Q. If they were to adjourn till Saturday, would he be able to attend as a member of this Court?

A. I cannot say till I see the effects of the medicines I have prescribed.

The Court then withdrew for a few minutes.

President. "The Court have resolved to adjourn till to-morrow to see if Captain Cranston is so far recovered as to be able to take his seat in this Court."

Mr. Lucas was desired to attend to-morrow at nine o'clock

Friday, April 16.

Mr. Lucas, surgeon of the Defence called in.

Judge Advocate. What is the situation of Captain Cranston's health?

A. He is so ill I don't think he will be able to attend for several days.

Several members declared they had seen Captain Cranston, and believed him to be too ill to attend.

Surgeon withdrew.

Captains Linzee, Colpoys, and Walters changed their seats in consequence, agreeable to the dates of their commission.

Rear

Rear Admiral CAMPBELL called in, and his last answer of Wednesday read over to him.

Judge Advocate. Did Vice-Admiral Sir Hugh Palliser signify by signal, or otherwise, his incapacity to obey the orders of the Admiral?

A. He did not.

Q. Did you see any reason or incapacity in the *Formidable*, why she did not obey the signal, or did the *Fox* bring any message back of that sort?

A. No. She had her fore-top-sail unbent for several hours, but I could not think that a ship with no apparent damage, but her fore-top-sail unbent, could prevent her obeying a signal: the Admiral and I had much talk about it. I hinted, nay I feared that the Vice-Admiral was wounded; it never entered into my head that the ship was disabled, for if it had, he would have signified the same to the Admiral, or have shifted his flag on board some other ship, either of which he might have done.

Q. Was the weather such as a boat might pass from ship to ship?

A. Certainly they could, as more than one had come on board of us, and returned.

Q. Was not Captain Marshall, before the *Victory* wore to the southward, ordered by the Admiral to come on board? and was not he sent with orders? To whom were they sent, and what orders were they?

A. I saw him on board, but don't recollect his receiving any orders from me; nor do I recollect the occasion of his being on board.

Q. What was the position of the Vice-Admiral from five to seven in the afternoon with respect to the *Victory*?

A. She was so far upon the *Victory's* weather quarter, that the *Fox*, when she was sent upon the larboard

larboard tack with the orders, she did not reach her upon that tack. I did not see her at main stays, but I saw she had put about before she joined the Formidable.

Q. What was the distance of the Formidable from the Victory, when the Fox went to her?

A. It is not easy to ascertain distances at sea. I think nearer three miles than two.

Q. Was the red division at that time in its station, in the line a-head, and what was the number of ships at that time joined with the centre division?

A. No; but a few minutes before the Fox was sent with the message, the Milford was dispatched to order the Vice of the Red to form a-head; for at that time the Vice-Admiral was agreeable to orders formed a-stern; all the centre division were connected; but a little before five, there were two ships that had been stationed a-stern upon that tack had formed a-head.

Q. Was the British fleet at any time of the evening of the 27th, in a situation to re-attack the French fleet, if the Vice-Admiral of the Blue had come down with his division, and formed in the line?

A. I don't think the centre division was well connected in a line before five o'clock, and I believe the Admiral did not seem disposed to go down before that time.

Q. At what time, and how soon, was the British fleet in a situation to re-attack? and how did the head-most ship of the French bear?

A. The head-most French ship, at five o'clock, was before the Victory's beam; and at five o'clock, had the Vice-Admiral of the Blue come down, the Admiral would have bore down immediately. When we were, at two o'clock, upon the starboard tack, the Admiral expressed his intention of bearing down to re-attack; but on looking round, he could not think of doing

doing it, as he saw many of his ships upon different tacks to what he was himself. Had all his ships heads been one way, he would have bore down, although they were not in a regular line. The Vice-Admiral himself was standing on a contrary tack, as has already been said.

Q. Did the Admiral determine to attack the enemy after five o'clock, without waiting for the line being compleatly formed?

A. Yes; he had all along expressed to me that he intended to attack them immediately as he got his ships collected; he only wanted them to be so collected as to be able to support each other.

Q. How did the head-most ship of the enemy bear from the Victory when the centre and van division were collected, and at what distance?

A. The Red division got into their station very soon after they received the orders; Sir Robert Harland weathered us more than a mile, but as he carried a deal of sail, he was not long getting into his station. I have already described the distance the French fleet were at the time of sending the message, and at five o'clock, I think they were about two miles to leeward, and about the lee-beam of the Victory: we steered several courses that afternoon.

Q. Was the wind favourable for the Vice-Admiral of the Blue to get into his station?

A. Certainly.

Q. Did it appear to you, that the disobedience of the Vice-Admiral of the Blue in not obeying the signals and orders, was the cause of the attack not being renewed?

A. I am certain if the Vice-Admiral of the Blue had led down with his division, the Admiral would have attempted to re-attack; the reason we did not attack was, our waiting for the ships of the Blue division; he

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was

was resolved to do it until, I think, about seven o'clock, or between seven and eight, when the Admiral expressed to me, that he had given over all thoughts for that evening.

Q. Can you ascertain the time when the van division got into their station, and how did the headmost ship of the French bear from the Victory at that time?

A. I think Sir Robert Harland and his division got into their station about six o'clock, and the headmost ship of the French bore then, I think, before the Victory's lee-beam.

Q. Did the Admiral assign any reason for the Red division being placed in the rear, and about what time did it take place?

A. The Admiral, while our heads were to the northward on the larboard tack, had ordered a frigate to go to Sir Robert Harland and tell him to form a-head, as we had no ships then formed a head, and, consequently, when we wore again, we had no ships formed a-stern; but before the Frigate had got out of hale, and on our wearing a second time, the frigate was ordered to tell Sir Robert Harland to form a-stern. I think it was Captain Sutton the orders were given to.

Q. You mentioned before the Milford was sent?

A. That was at five o'clock the Milford was sent.

Q. At what time did the Formidable get into her station on the 27th of July in the afternoon?

A. I have already said I did not see the Formidable get into her station the whole afternoon, or make any attempt to do the same. After it was mentioned that she did not bear away I was anxious to see her get into her station, and from about a quarter before four to a quarter past seven o'clock I had my glass frequently looking at her, and after the Admiral had given up all thoughts of renewing the attack that she might edge down, but I never understood he did; but you may be

be pleased to add, that I am sure she did not get into her station while there was day light to see it.

Q Did the Victory carry her distinguishing lights on the night of the 27th of July ?

A. She did—and particular orders were given to put a candle in every socket; they had generally omitted one before. As much light was put in each lanthorn as it would contain. She likewise carried a light at her bowsprit end.

Q Did you see any lights on board the Formidable in the night to distinguish her as a flag ship ?

A. I did not see the Formidable or any of her lights after the day closed in.

Q Were any means made use of afterwards by signals or orders to the Vice-Admiral of the Blue, from seven o'clock in the evening until day light next morning ?

A. After, or about seven o'clock, pennants were thrown out for every ship in his division to come down, except his own ship.

Q In what position was the Vice-Admiral of the Blue at day break of the morning of the 28th of July ?

A. I cannot say, my attention was chiefly taken up with the three French ships which were seen to leeward, and of finding proper ships to send to chase them agreeable to the Admiral's orders.

Q Did you see distinguishing lights on board the Vice-Admiral of the Red in the night of the 27th ?

A. Yes, I did, soon after the day closed in, but afterwards did not pay any attention to them.

Q Was not the Victory much damaged in the action with the French fleet ?

A. We had our masts and yards damaged, our rigging cut, and some shot in the hull; one of the

lower deck ports was obliged to be mended before we wore.

Q. How long was it before she was ready to get into action again ?

A. We should have stood on immediately on our wearing at two o'clock had we been able to get our ships collected, but finding they were not, we took the opportunity of unbending the main sail which was much cut below the reefs. We at first thought of reefing it, but finding we had time, we bent a new one. The Admiral opposed it at first, but finding we should lose no time he acquiesced in it.

Q. When the Victory wore to the southward, with the line of battle flying, was it not meant by that evolution to collect the ships, and form a regular line of battle before you engaged again ?

A. The principal use of it was to collect the ships as fast as possible, but notwithstanding that signal, the commander in chief had it in his power to edge away if he thought proper ; but that signal was, in my opinion, the best for the purpose, and was the signal of all others, which commanded the most speedy attention.

Q. When the Victory wore to the southward and edged away from the wind, how long did she keep upon that tack before she hauled her wind ?

A. She did not haul upon a wind until about five o'clock ; we did not keep constantly large. I do not recollect exactly what time we hauled our wind, but the log-book will tell.

Q. What sail was the Victory under, and did she encrease her distance from the Formidable, by edging away to join those ships to leeward ?

A. She encreased her distance from the Formidable all the while ; when we edged away, we consequently ran to leeward of her wake, and thereby encreased
our

our distance; when we dispatched the frigate she was about two miles upon our weather quarter, Sir Robert Harland passed us about a mile, and passed the Formidable considerably to leeward; I cannot exactly ascertain, I wish I could.

Q. Did the Victory encrease or near her distance after she had hauled her wind?

A. That's a nice point, I cannot say.

Q. Were all, or any part of the ships of the Blue division, in the line in the course of the evening?

A. Yes, several of them bore down when their pennants were thrown out, and about eight o'clock some were very near in a line. I don't think they were exactly in their situation, but nearly so.

Q. When the Victory was upon the starboard tack with the line of battle flying, did she carry so much sail as to prevent the Formidable getting into her station?

A. She had her fore-sail and double reefed top sails; we did not go more than three or three and a half knots all the while, but I have already said the Formidable never attempted to get into the line that I saw.

Q. Was the Formidable left quite alone when the rest of the ships wore?

A. No, there was one I think that kept on a contrary tack, and another did not appear to bear away; but I have already said, after the Admiral gave up all thoughts of engaging, I did.

Q. What course should the Formidable have steered, when you was upon the starboard tack, to have got into her station?

A. She was about four points upon our weather quarter, and as her station was considerably a-stern, consequently must have bore away considerably from the wind to have got into it.

Q. Did

Q. Did Admiral Keppel express his disapprobation at the Vice-Admiral not bearing down, and what were his words?

A. He did express much disappointment, uneasiness, and disapprobation, but our conversation was too complex to relate. I may add that he had great displeasure, he once upon the quarter deck said with some warmth, more than was usual, "I did not think, I could not have believed I should be so ill-obeyed."

Q. What sail did the Victory carry in the night of the 27th, and at what rate did you sail?

A. We took the third reefed in our top-sails when the bell rung eight: we furled the mizen-top-sail, that it might not obstruct the main-top lights from the ships behind. We had our fore-sail. I cannot say whether our mizen stay-sail was out or not. I remember, when we reefed, the French fleet did the same, I don't recollect the rate we went. The log-book will shew that best. The mizen was not hauled out, as it might obstruct the signal for line of battle, which was flying all night.

Q. What sail had the Formidable from the time you passed her on the larboard tack, until seven o'clock in the afternoon?

A. I saw her with her fore-top-sail unbent, when we first passed her to leeward, and I never saw her with it bent the whole afternoon. I cannot say what sail she had out, but she was without a fore-top-sail whenever I looked at her. I with the glass could see her top-gallant-studding sail-booms troisted up to the shrouds, ready for bending the top-sail, and I one time saw a man going into her top. I directly said to the Admiral, I fancy they are going to bend their top-sail, and then they will bear down.

Q. After

Q. After the rear of the English fleet had come out of action, did not the Formidable, with some ships of his division, wear and lay their heads to the enemy before the Admiral had wore? if so, how long did they lay in that situation?

A. After the firing ceased I did not take notice of the Formidable, until the two ships passed upon the different tacks; neither did I ever know that the Formidable did lay her head, until told so by Sir Hugh Palliser at Mr. Keppel's house in town; and I did not readily credit it, as I scarce thought it possible for a ship which had wore with her head to the enemy to presume to wear back again, without orders from the Admiral commanding; especially when the Commander was standing towards them.

Q. What were the number of ships of the Blue division that were ordered to chace on the morning of the 27th of July?

A. I think six or seven; it was all that were going under easy sail.

Q. Do you think there was day light enough after eight o'clock to renew the action?

A. No; day light must have been shut in before we could reach them. We certainly might have edged to them, but before we could have joined battle, in my opinion, night must have shut in. I desire this may be put as mere matter of opinion.

Q. Do you know of any thing farther of the conduct of Sir Hugh Palliser, which is reprehensible either before the action, in the action, or after, that may be necessary for this Court to hear, which you have not already given?

A. I have already said, I cannot go into a narrative of the Formidable's proceedings; I am ready to answer in a direct manner to any precise question, but with-

Admiral Campbell.] (44)

without a specific question, I do not choose to say any thing farther.

Admiral Digby. I do not think Admiral Campbell understands the question.

Admiral Campbell. I understand it perfectly well, but it is so long ago, I cannot recollect every particular circumstance. I think the Court have asked me every question from the beginning to the end.

Cross-Examination by Sir Hugh Palliser.

Q. What do you understand to have been the order of sailing in force in the morning of the 27th of July?

A. We were on the morning of the 27th of July, on the larboard tack, consequently the Vice-Admiral of the Blue and his division should have been upon the larboard quarter of the Victory, and the Vice-Admiral of the Red and his division upon the starboard quarter.

Q. When was the last time the fleet was formed in a line before the action, and upon what tack?

A. On the second day of seeing them in the afternoon, I think was the last time.

Q. Do you remember when the fleet was in a line that evening and tacked all together, that the signal for line of battle was hauled down?

A. As the two trials have been confined to the 27th and 28th of July, I have not endeavoured to recollect any thing of the other days, but I believe it may be so, and am inclined to think it was.

Q. Do you understand that when a signal is made for a whole fleet to tack together under the circumstances before described, the respective divisions are then enjoined to observe their distances from the Admiral?

A. The

A. The signal for line was hauled down before the signal for tacking, as I understand, (for I don't recollect) but I think as the Vice-Admiral would have me; it is much better for the two divisions to keep their respective distances when they tack, than to run in between each other; and the second time of failing an order was given out to prevent any confusion of the two divisions running through each other at any time in tacking, which was not the first time.

Q. The last time the fleet tacked before the 27th, was it not by signal for the whole to tack together?

A. I don't recollect; I believe it might.

Q. by Admiral Digby. Does Admiral Campbell mean, that Sir Hugh Palliser should have been on the Victory's larboard quarter, on the morning of the 27th?

A. I think the order of failing, when an enemy is in fight, is not to be minded. The divisions are to keep as much to windward as the Commander in Chief is, and it was the duty of Sir Hugh Palliser to keep as much to windward, and as near their Admiral, Commander in Chief, as possible; and if the Formidable was weatherly enough, it was her place to be upon the Victory's weather quarter.

Q. Was not the Red division upon the Admiral's larboard quarter, on the morning of the 27th of July?

A. Yes.

Q. Was he not placed in that situation, by the Admiral's signal, for all to tack together? and was not I placed in a quite contrary position by that signal?

A. No, I think not; and on the morning of the 27th, Sir Robert Harland was so far to windward, as to permit the Vice-Admiral of the Blue to have got much more to windward than he was. When an

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enemy

enemy is in sight to windward, I think that no ship ought to keep to leeward. I did not expect to find the Vice-Admiral, in the morning of the 27th, to windward of us, because he was to leeward in the evening; but I was surprized to find he had fell to leeward in the night. The Vice-Admiral of the Red was upon the weather quarter of the Victory, and considerably to windward.

Q. Did not the Victory, after she had passed the rear of the enemy, stand directly for the Formidable?

A. I don't exactly know; but I think she must, as we met.

Q. What sail did the Victory carry when she stood to the southward?

A. I have already said, under double reefed top-sails and fore-sails.

Q. Was the mizen or mizen-stay-sail out?

A. The mizen was never out, because it would have obstructed the signal for the line. I never suffered it; nay, the Admiral would not let it. The mizen-stay-sail I don't think was out, because we were edging away.

Q. Did the Victory ever lay too any part of that afternoon?

A. No; no part of it.

Q. You have said the signal for ships to windward was up the first time, but a little while before it was hauled down: I would ask the reason why it was hauled down?

A. I never said so. When the signal for the line was hauled down the Admiral ordered it, that the Blue flag, which was then hoisted at the mizen peak, might be seen more plain; but it was not down more than ten minutes before it was hoisted again, and the Blue flag was then kept hoisted under the signal for
the

the line. I never before (upon this trial) was asked the question, but that is the fact.

Q. Do you mean to say they were hoisted directly after one another?

A. They were not hoisted by the same halliards, but they were not more than ten minutes apart.

Q. Does the Admiral know that the Formidable and the ships of my division were the last out of action?

A. Yes, all except one, which was a-head of the Victory.

Q. Does the Admiral not know, that that division suffered more than the other two divisions, by the returns made to the Admiral?

A. Yes, I have understood so, but did not know it until the unhappy disputes which have occasioned these courts martial.

Witness withdrew.

The Honourable ROBERT BOYLE WAL-
SINGHAM called in and sworn.

Q. What division did you belong to?

A. The Admiral's.

Q. Did it appear to you that Sir Hugh Palliser did all that lay in his power to bring the ships of his division into action on the morning of the 27th?

A. I paid very little attention.

Q. Did you observe whether the Formidable behaved during the action as became an officer of his rank?

A. She went into action well, and kept up a warm and brisk fire.

Q. Did you see her after?

A. No, I was so much taken up with my own ship,

Q. At what time was the Red division in the rear upon the starboard tack, and what time did it quit the rear to go a-head?

A. They passed me a little after five.

Q. What situation was the Thunderer in with respect to the Victory at that time?

A. A-head of the Victory on the starboard tack.

Q. Do you know when the Red division got into its station, a-head of the center?

A. A little time after they passed me.

Q. What was the position of the Blue division at that time with respect to the Victory?

A. I cannot say, but with respect to my ship, they were to windward on the starboard quarter.

Q. Can you ascertain the distance?

A. As we stood on the distance encreased, the Vice-Admiral keeping the wind.

Q. At what time did you first see the signal for line of battle on board the Victory, and how long was it flying?

A. About two o'clock, and I believe it was flying all night, except for a little time.

Q. Was the signal for line of battle repeated, and by whom?

A. It was repeated by the Arethusa frigate, the ship I looked to.

Q. Was it repeated by the second Vice-Admiral?

A. It was repeated by the Vice of the Red, but it was not repeated by the Vice-Admiral of the Blue.

Q. Were any other general signals made on board the Victory from the time she was on the starboard tack until dark? Were they repeated and by whom?

A. There was the Blue flag at the mizen peak with the signals for particular ships to get into their station: the Blue flag was repeated by the Vice-Admiral of the Blue.

Q. Did

Q. Did the Vice of the Blue come into his station in consequence of these signals?

A. No.

Q. Did you see any impediment to his doing it? and what were they?

A. I saw none.

Q. by President. Did you see the Formidable's fore-top-sail unbent?

A. Yes, for some hours.

Q. Did the Vice-Admiral of the Blue make any visible effort to come into his station in the line, or otherwise?

A. None that I saw.

Q. From the general position of the fleet between five and seven o'clock, had you any reason to think it was the Admiral's intention to renew the attack that afternoon?

A. It was my firm opinion it was, and as a proof of it, my hands were never from their quarters.

Q. What do you suppose were the Admiral's reasons for not re-attacking the enemy?

A. Because he was not supported by the Vice-Admiral of the Blue.

Q. What time was the Thunderer in a condition to take her station in the line?

A. At any time.

Q. Did the Vice-Admiral of the Blue make any signals of distress, or endeavour to speak to the Admiral?

A. None that I saw.

Q. Did you, when you saw the signal for the line of battle flying, suppose he meant to re-attack the enemy, when he had got his ships collected?

A. Yes, as the line of battle was flying.

Q. When you saw the Formidable's fore-top-sail unbent, did you see another bent before the enemy?

A. No,

A. No, I did not.

Q. How long was the Vice-Admiral of the Blue out of action before the Admiral made the signal for line of battle?

A. I don't recollect.

Q. Do you know?

A. I know of nothing more, than that he did not obey the Admiral's signals.

Q. Did the Victory carry her distinguishing lights?

A. I could not see them, I was a-head, I saw Sir Robert Harland's

Cross-Examination.

Q. Do you recollect taking notice of the Formidable during the action after you came out?

A. I said before, I thought she went in well, with great spirit, and kept up a warm and constant fire.

Q. Had I not the favour of a visit from you a day or two after the action?

A. Yes; I waited on you with Lord Mulgrave.

Q. Do you recollect at that time, or any else, making any compliments on my behaviour?

A. Yes; in time of action.

Q. from the Court. If you did not see what sail the Formidable set, how do you know she made no effort to get into her station?

A. Because the Formidable was to windward of the Admiral, and never bore up in consequence of the signal.

Saturday, April 17.

At the meeting of the Court this morning, it was urged by one of the members that Admiral Campbell recollecting that he had made some little mistake in his evidence, wished to have it corrected; in consequence of which a trifling debate ensued; but it appearing

pearing at last that the Admiral did not want to introduce any new matter, Sir H. Palliser was asked whether he had any objection to the Admiral's being called again?—who saying he had none;—Admiral Campbell was called in.

Admiral Campbell. Yesterday's examination being very long, I expressed a desire at the close of it to have the minutes read to me, as I had some doubts respecting a part of it, and therefore wished to set the matter right to the Court. When I was asked about the centre division, I said it was connected about five o'clock, when two ships were a-stern; the Vengeance, Captain Clement's, was not in a line. If the Admiral had again attacked, he must have brought her in the line.

President. We can make no alteration, it must remain as it stands.

Admiral Campbell. I have no objection; it is not very material, it only escaped my memory.

Captain Jonathan Faulkner called in and sworn.

Captain Faulkner. I should be glad to hear the order of the Admiralty read.

The order was read.

Q. You will give an account of the proceedings and situation of the Vice-Admiral of the Blue on the morning of the 27th of July, till he came into action?

A. He was between the chest-tree and lee-beam of the Victory, with his main sail up, two or three miles to leeward. All the ships except the Ocean had their mainsails up; about six o'clock the signal for six or seven ships of the Vice-Admiral of the Blue's division were made to chase to windward, which signal they immediately complied with, and not long after
the

the Vice-Admiral himself; then our ship stretched ahead, I don't know when he went into battle.

Q. Did it appear to you that Sir Hugh Palliser on the morning of the 27th did all in his power to bring the Formidable and his division into action?

A. I have already said he made sail, which was all they had in their power, to gain the wind.

Q. Did you see the Vice-Admiral of the Blue act in such a manner as became an officer of his rank and station in the British fleet?

A. I did not see the Formidable, my attention was taken up in my own duty on board the Victory: the orders being given to wear by the Admiral, I was making preparations for that purpose.

Q. Did you expect the van to come into action?

A. I did not—I observed it to be very hazy that morning, so that I could not see so well as I could have wished; 'tis a long time to recollect; I could not expect they could have fetched the van of the fleet.

Q. To your knowledge did the Admiral expect it?

A. I am sure he did not.

Q. Did you see the Formidable when she came out of action, and what was her position in respect to the Victory?

A. I did not see her till some time after, and the Victory was passing to windward of the Formidable; we were then on the larboard tack, and the Formidable on the starboard tack.

Q. Were there any signals from the Victory for the Formidable?

A. There were: the first to wear, and then as soon as we had wore, the signal for the line of battle was hoisted.

Q. Did it appear to you, that the Formidable repeated the signals?

A. I

A. I am sure she did not.

Q. How long did the Victory continue on the larboard tack ?

A. Till a quarter past three.

Q. Did the Formidable obey the signal while on the larboard tack ?

A. No.

Q. At what time did they form the line a-head ?

A. I have already answered that.

Q. Did the Arethusa repeat that signal ?

A. She did.

Q. What time did the Victory wear from the larboard to the starboard tack ?

A. She wore by signal, which was repeated by the repeating frigate.

Q. Were any other general signals made, and what were they while on the starboard tack till dark ?

A. The signal for the line of battle was hauled down a quarter before four, and that signal was replaced by the signal for coming into the Admiral's wake, when the signal was hauled down, and the signal for the line of battle a-head a cable's length a-funder, replaced a little before five o'clock ; the signal for the Milford or Fox to come within hail ; between four and five the signal for bearing down was hoisted under the signal for the line of battle.—[Captain Faulkner here referred to the minutes he made use of on the late trial.]

Q. How long was those signals kept flying ?

A. Till dark.

Q. Did the Formidable repeat the signal for ships coming into the Admiral's wake ?

A. She repeated them as well as the frigate, the Arethusa, at a quarter before four.

Q. Was the signal for the line repeated by the Vice Admiral of the Blue ?

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A. It

A. It was not that I saw ; it was on board the repeating frigate immediately.

Q. Do you remember the Fox being called to the Admiral, and at what time ?

A. The signal was made for the Fox and Milford a little before five ; they were made together to come within hail.

Q. What orders did the Fox receive ?

A. I did not hear them given.

Q. Did it appear to you that the Fox joined the Formidable, and at what time ?

A. I observed the Fox's top-gallant sails and main-sail were set, and keeping on the starboard tack ; the time she spoke with the Formidable I know not.

A member of the Court. At what time did the Fox come within hail of the Victory ?

A. About twenty minutes, or not so much, before she was within hail of the Admiral ; a little before five.

Q. Did the Fox fetch the Formidable without making aboard ?

A. It was impossible, because the Formidable was broad open to windward of her.

Q. Was the Victory on a wind close-hauled, when she went to the Formidable ?

A. When the Victory first wore at seven minutes past three, she did not keep her wind, but edged away in order to succour four or five ships in the south-east-quarter, the wind then westerly ; at five o'clock we were upon a wind again.

Q. Did you see the Fox join the Formidable ?

A. I did not.

Q. How far was the Formidable from the Victory, do you think, at that time to windward ?

A. Yes ; between two and three miles.

Q. Did

Q. Did the Formidable bear down after the Fox was sent to her ?

A. No.

Q. What position was the Formidable in from the Fox and Victory at that time ?

A. I said the Fox could fetch her two or three points abaft her weather beam.

Q. Did Sir Hugh Palliser signify to the Commander in Chief by signal his incapacity of bearing down to the Admiral ?

A. I saw no other signal made on board the Formidable but what I have already described ; no message was received on board the Victory.

Q. Did you perceive any disability on board the Formidable to obey those signals ?

A. The Formidable's masts and yards were all in their places, none shot away that I saw ; none carried away.

Q. What sail was the Formidable under when the Fox went to her ?

A. Her fore-top-sail was unbent, her courses main and mizen top sails set ; she unbent her fore-top-sail ; she set her mainsail ;—I cannot be precise.

Q. Do you think that he could or could not obey the signals on board the Victory, and that nothing hindered him.

A. I know he was in the wind's eye of his station, or thereabouts, and saw no external appearance that could prevent his coming down into his station.

Q. Was not Captain Marshall ordered to come on board the Victory ; and what orders did he receive ?

A. He did ; but the orders I know not.

Q. When the Admiral wore to the starboard tack, standing to the southward, what number of ships were formed in the centre division at six o'clock ?

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A. The

A. The greatest part of that division were in their places—the Sandwich was not,—and the Vengeance was a little a-stern.

Q. What was the position of the Red division at six o'clock ?

A. A-head of the Admiral, nearly got into their station.

Q. Was the enemy at that time formed in a regular line of battle, and how did their head-most ship stand in respect to the Victory ?

A. Some were formed, others forming, or nearly formed ; their position on the lee quarter of the Victory at six o'clock ; how many I cannot say.

Q. What was the position of the Vice-Admiral of the Blue at that time ?

A. Aboard the Victory's weather-beam ; the same she had been in before.

Q. Did the Formidable contrive to keep close to the wind after the Fox had spoken to her ?

A. I never saw the Formidable bear down at all, as I said before.

Q. Was the British fleet at any time, or at what time, able to re-attack the French fleet, if the Vice-Admiral of the Blue had come down, and formed the line on the evening of the 27th of July ?

A. A little after six, I should suppose the van and centre division were in that situation ; that it might have been renewed a little after six o'clock.

Q. Whether the British and the French fleets were respectively in their situations so as to have admitted of an attack on the side of the British fleet, so soon as you mention ?

A. The French fleet were to leeward of the British fleet—this is matter of fact, and in my opinion you can always attack a ship to leeward of you.

Q. What

Q. What number of ships of the Blue division had the Vice-Admiral of the Blue with him at that time?

A. I do not remember that there were any absent at that period.

Q. Did it appear to you that the disobedience of the signals by the Vice-Admiral of the Blue, was the reason that the attack was not renewed?

A. I know of no other.

Q. Did the Admiral assign any reason that the Red division were placed in the rear, and what time did it take place?

A. He assigned no reason to me. It did not appear to me, that there were any ships a-stern of the Victory, or in her wake, when the Milford was sent at five o'clock.

Q. At what hour did the Formidable come into her station on the evening of the 27th of July?

A. Not at all after the battle.

Q. Did the Victory carry her distinguishing lights on the evening of the 27th?

A. She did; and I took care that the lanthorns should be well cleaned, with the addition of a very good light at the bow-sprit end.

Q. Did you see those on board the Vice-Admiral of the Red that night?

A. I did more than once.

Q. Did you see any on board the Formidable?

A. I never saw any lights she had at all, after dark.

Q. In what position was the Vice-Admiral of the Blue on the morning of the 28th, in respect to the Victory?

A. I can't say at day break; but when we bore away for the three ships under the fleets lee the Vice-Admiral of the Blue was to southward about a league,

league, and to leeward of the Victory at four o'clock in the morning.

Q. Had the Vice-Admiral of the Blue been in his station on the night of the 27th, could you have seen his lights?

A. It would have been impossible for the Victory to have seen it.

Q. Was not the Victory a good deal damaged in the action of the 27th?

A. She received her share of damage, the particulars are in the minutes of the late Court-Martial.

Q. How long was it before she was again fit to go into action?

A. By four o'clock fit to go any where.

Q. When the Victory wore to the southward with the signal for the line flying, was it not meant by that evolution to collect the ships, and form a regular line of battle for to come again into action?

A. I should suppose so—it is my sense of the question; most undoubtedly it was.

Q. When the Victory wore to the southward, and edged away from the wind, at what time did she again haul the wind?

A. I am not positive; I have described before,—between five and six, I suppose.

Q. What sail was the Victory under, and did she increase her distance in respect to the Formidable?

A. Foresail and three double reefed topsails. I cannot say what distance; we left her still in possession of the wind.

Q. When the Victory hauled her wind, what was the position of the Red division at that time?

A. Getting forward into their post a-head of the Victory?

Q. Did you increase, or near the Formidable, after the Victory hauled her wind?

A. The

A. The *Formidable*, in my eye, was still in the same place.

Q. At what hour were the particular ships signal of the Blue division made to come into the Admiral's wake?

A. A little before seven o'clock.

Q. Were all, or any of the Blue division in a line in any part of the evening?

A. I saw the *Ocean* come down, and no other, before dark, and the *Elizabeth*, both to leeward.

Q. When the *Victory* was on the starboard tack, with the line of battle flying, did she carry so much sail as to prevent the Vice-Admiral of the Blue coming in to his station?

A. No.

Q. What time in the evening of the 27th did Admiral Keppel give up his intention of renewing the attack?

A. I had no communication with him on the subject.

Q. Did he express his disappointment, and disapprobation of the Vice-Admiral not obeying the signals, and do you recollect what he said?

A. He did express great uneasiness, and anxiety, and asked me what they could be about? My answer was, that I could not tell.

Q. Did the *Formidable* make any signals of distress to speak with the Admiral?

A. None.

A member of the Court. Sir Hugh Palliser allows the question, and wishes it may not be repeated,—he allows he made no signals.

Q. What sail did the *Victory* carry on the night of the 27th, and at what rate did she go?

A. Treble reefed topsails, fore-sail, and I think mizzen up, mizzen stay-sail set.

Q. Was

Q. Was the mizen out in the evening, when the signal was flying?

A. No.

Q. At what rate did she go?

A. Sometimes two knots, sometimes under, the whole night long.

Q. After the rear of the British fleet came out of action, did not some of the Vice Admiral of the Blue's division wear, and lay their heads to the enemy?

A. I did not see any, after the Vice of the Blue was with his head towards the enemy, after he passed them.

Q. As it appeared that the French fleet soon after action had formed into a line, was it in their power to re-attack the British fleet?

A. They had it in their power to have re-attacked the British fleet soon after the action.

[Captain Faulkner here withdrew without being cross-examined by the prisoner.]

Mr. ROGERS, Admiral Keppel's Secretary, called in and sworn.

Q. Did you attend Admiral Keppel to take notes on the 27th of July?

A. Yes.

Q. Did you always do so?

A. Yes.

Q. What general signals were made?

A. The first signal I took notice of, was for the fleet to tack at ten in the morning.

Q. The next?

A. At twenty minutes past eleven, the ships a-head beginning to fire upon the French fleet, the signal for battle was immediately made; twenty minutes after one the signal made to wear; did not wear till a quarter before two; the signal for battle was hauled down about

about this time ; at two o'clock the signal was made for line of battle a-head ; ten minutes after three to wear ; very soon after to bear into the Admiral's wake ; a few minutes after five for all ships to get into their stations ; at seven o'clock many pennants thrown out for ships of the Vice-Admiral of the Blue's division to obey the signal flying.

Q. Was there not a signal made for the Fox to come within hail of the Victory ?

A. There was.

Q. Do you remember the time ?

A. No.

Q. Do you remember any orders sent by her ?

A. Yes perfectly.

Q. What were they ?

A. Captain Windsor was directed to go to the Vice-Admiral of the Blue, to desire him to bear away into his station in the line, as the Admiral waited for him to renew the action.

Q. Did you see the Fox range near the Formidable ?

A. I did ; I saw her some time afterwards on the lee quarter of the Formidable.

Q. At what time ?

A. Five o'clock.

Q. Did the Vice-Admiral of the Blue bear down in consequence of those orders ?

A. No.

Q. How was the Vice-Admiral of the Blue situated at that time ?

A. Upon the Victory's weather quarter.

Q. Can you judge what distance ?

A. I would not wish to speak as to distance.

Q. Did you observe the signal for the line of battle a-head to be repeated on board the Formidable during the afternoon ?

A. No.

I

Q. Was

Q. Was the signal for the line of battle a-head flying from the time the Victory wore to the southward till dark that evening?

A. It was, and hauled down only for a short time.

Q. How many ships of the Vice-Admiral of the Blue's division bore down in consequence of the pennants being out?

A. Some did; the number I know not, or what ships they were.

Q. Did you see the signals you have mentioned repeated by the *Arethusa*?

A. Yes, punctually.

Q. Were they repeated on board the *Formidable*?

A. Only the blue flag at the mizen-peak and some pennants thrown out.

Q. Did you see the *Formidable* during the action?

A. I did not observe her.

Q. Did you notice the *Formidable* after the Victory came out of action?

A. I can't say I did, so as to be particular in giving any account of her.

Q. Was the Victory in such a situation as to have seen the signal of the line of battle, had it been flying on board the *Formidable*?

A. Yes, certainly.

Q. Was any other order or message, besides what you have mentioned, sent to any other ships of the fleet on the day of action?

A. Yes, there were.

Q. What were they?

A. A little before three o'clock Captain Sutton of the *Proserpine* was called on board in order to be sent to the Vice-Admiral of the Red, as he had the position to lead on the larboard tack; before he had left the Victory she had wore to the southward; he was directed to order Sir Robert Harland to keep on the weather

weather quarter a-stern, his then position; three quarters past four the Milford was sent to Sir Robert Harland to lead a-head.—I recollect no other messages that day.

Q. How long after that did Sir Robert Harland pass the Victory?

A. I cannot say exactly; he obeyed the order as soon as the ship got to him—perhaps half an hour, or very little more.

Q. Did you hear Admiral Keppel express his displeasure and disapprobation at the ships not bearing down into his wake agreeable to the signal?

A. He expressed great anxiety and disappointment at the Vice-Admiral of the Blue's not coming down in consequence of the signals.

Q. Did you hear the Admiral say that if he could have formed his line he would have renewed the action?

A. I cannot say he used those express words;—there was no doubt with any body on board the Victory but that his intentions were such.

[Ordered to withdraw, not being cross-examined.]

Captain MARSHALL, of the Arethusa Frigate called in and sworn.

Q. Were you appointed to repeat the signals from on board the Victory on the 27th of July?

A. I was.

Q. You will give a general account of signals made that day, distinguishing the times when hoisted, place where hoisted, signification thereof, and time when hauled down?

A. I beg to refer to the minutes taken on board by my order by the purser; I can swear to the signals, but not to the time, as I cannot be exact, only in the repeating of them.

Q. Were those minutes admitted in the last Court-Martial?

I 2

A. They

A. They were, I saw every signal distinct, and gave my orders according to the same.

Court. Please to go on with a general account.

A. The first signal was thirty minutes past ten, A. M. Unions fore mizen top-mast heads; one gun for the whole fleet to tack together: hauled down forty-two minutes past ten.—Five minutes past eleven A. M. Red flag fore top-mast head; one gun for the fleet to engage.—Two minutes past one P. M.—Blue pennant, ensign staff for the fleet to wear; hauled down ten minutes past one; forty minutes past one, flags Union and Blue, with Red cross, mizen peak; Union upwards for the fleet to form a line a-head, one cable's length asunder, hauled down twenty-three minutes after three.—Fifty minutes past one, flag striped Blue and White, mizen top-mast head, for a particular ship to come within hail; hauled down at two. The *Proserpine* and *Arethusa's* signals were thrown out at the same time.—Fifty minutes past two, Blue pennant, ensign staff, for the fleet to wear; hauled down at three.—Three Yellow pennants, main-topmast-head, *Proserpine's* signal, hauled down fifteen minutes past three.—Twenty-four minutes past three, Blue flag, mizen peak, for ships to windward to get into the Admiral's wake.—At thirty minutes past three hauled down.—Thirty minutes past three Union and Blue flag, with Red cross, mizen peak, for the fleet to form a line a-head, a cable's length asunder; hauled down next morning at day-light.—Fifty minutes past three, Yellow pennant, mizen-top-mast head, *Milford's* signal; at thirty-three minutes past four hauled down; a White pennant hoisted before a flag striped Blue and White.—Main topmast head, *Duke's* signal to make more sail, who made sail in consequence; hauled down thirty-four minutes after four, the flag: the pennant hauled down at thirty-two minutes past five.—Thirty-two minutes past four, the
Spanish

Spanish flag hoisted observing ships out of their stations; not hauled down till dark.—Fifty-six minutes past four, Red pennant mizen topmast head, Prince George's signal; hauled in at two minutes past five.—Fifty-seven minutes past four, Blue pennant, starboard mizen top-sail yard-arm, Bienfaissant's signal; not noted when it was hauled down.—Twenty-two minutes past five, Yellow pennant, main topmast head; the Proserpine's signal, hauled in two minutes past six.—Thirty-two minutes past five, Yellow pennant, starboard mizen top-sail yard-arm, Fox's signal; not noted when hauled in.—Ten minutes past six, Blue flag ensign staff, hauled down in three minutes, being hoisted by mistake; hauled down thirteen minutes past six.—Thirteen minutes past six, Blue flag at the mizen peak under the signal for the line, for ships to windward to get into the Admiral's wake; flying all night.—Thirty-six minutes past six, Red pennant larboard main top-sail yard-arm, Elizabeth's signal; same time, Blue pennant, larboard main top-sail yard-arm, Terrible's signal; same time, Blue pennant, larboard foreyard arm, Centaur's signal; same time, White pennant, larboard mizen top-sail yard-arm, America's signal; same time four or five Blue pennants flying on board the Admiral, but had only two pennants to answer them.

This was taken from a very rough piece of paper.

Monday, April 19.

Continuation of Capt. Marshall's Evidence.

Q. Were all the signals you have given an account of repeated on board the Arethusa?

A. They were, but I cannot ascertain the time exactly.

Q. Did you see the Formidable immediately after she came out of her station?

A. She

A. She was a-stern, and rather upon our weather quarter.

Q. Did you see her at any time on the larboard tack, with her head to the enemy?

A. I did.

Q. How long?

A. I cannot ascertain the time; I tacked on her weather quarter.

Admiral Digby. Did the Formidable wear from the larboard to the starboard tack?

A. I did not see her.

Q. Did you see her repeat the signal at forty minutes past one?

A. I did not.

Q. How long do you imagine the Formidable was on the larboard tack?

A. I cannot tell how long; she was on the larboard tack when I tacked on her weather quarter; the time I cannot say: there was a striped flag, blue and red, at the fore topmast-head fifty minutes past one, and I think the signal was thrown out. Just as we trimmed our sails, we looked up for the Victory: the Victory was upon the larboard tack at the time, and I was just under her lee bow. While I was in stays, I was hailed to come on board.

Q. What distance was the Victory from the Formidable while on the larboard tack?

A. I should suppose not above a mile: I cannot ascertain the distance at this period.

Q. At what distance do you suppose the Formidable at twenty-four minutes past three, when the signal was made for ships to come into the Admiral's wake?

A. I cannot tell.

Q. Did the Formidable bear down in consequence of that signal?

A. I have said before I cannot charge my memory.

Captain

Captain Peyton. When you was on board the Victory, what orders did you receive?

A. None particular: I met Captain Sutton going from the Victory.

Q. What was the position of the Formidable when the signal was made to form the line a cable's length afunder?

A. She must have been on the Victory's lee bow.

Q. Did you see whether they obeyed that signal?

A. I did not.

Q. Was she in a position that she could see the signal when it was first made?

A. I should suppose either from the Admiral, or the repeating frigate, as I was so wide of the Admiral.

Q. Did she repeat that signal?

A. I did not see it.

Q. Did you see the Fox join the Vice-Admiral of the Blue, in consequence of the signal being made for her, and at what time?

A. Immediately she did, at thirty-two minutes past five o'clock.

Captain Peyton. What distance was the Fox from the Victory when the signal was thrown out?

A. Near the Arethusa, who was about three miles before the Admiral's weather-beam, the distance I generally endeavoured to keep.

Captain Peyton. Did you observe the time when the Fox closed with the Admiral's stern, so as to be within hail?

A. I did not.

Q. Do you recollect afterwards to have seen the Fox join the Formidable, and at what time?

A. I do not.

Q. Did the Formidable bear down, in consequence of the Fox being sent to her?

A. I

A. I did observe she did.

Q. In what position was the Vice-Admiral of the Blue and his division, at thirteen minutes after six, when the signal was made for the Red division to bear down into the Admiral's wake?

A. The Formidable appeared two, or two points and a half, on the Arethusa's lee quarter.

Captain Peyton. Was the Arethusa then sailing upon a wind?

A. Yes; but we chiefly attended in keeping her station.

Q. Did the Vice-Admiral of the Blue repeat the signal last mentioned?

A. Yes, he did; I saw the flag of the Blue.

Q. Did he, in the Formidable, and the ships in his division, obey that signal?

A. I did not attend to the ships of that division: I have said before I did not see the Formidable bear down.

Q. Did the Formidable appear to be close to the wind, or to be edging down?

A. She did not appear to me to be edging down, but I do not know that she was close to the wind.

Q. Did you see any disability in the Formidable to prevent her obeying any of the signals?

A. Her fore top-sail was unbent: I do not recollect any thing more.

Q. Did you see Sir Robert Harland pass from his station a-head of the Victory to lead, and at what hour?

A. I do not recollect: they passed between the Victory and me.

Q. Was it before or after the last signal was made?

A. I do not recollect.

Q. What number of ships were formed in the center at six o'clock, when the Admiral was on the star-board tack?

A. I

A. I have said before, I do not know; and I am equally unable to say any thing relative to the other divisions at that time, but what I have already stated.

Q. What was the position of the French fleet at that hour relative to the English fleet?

A. They were ranging up about our larboard quarter, five or six sail.

Q. At what hour did the Formidable get into her station that evening?

A. I have said before, I did not see her bear down.

Capt. Peyton. At what hour did the van division get into their station in the line?

A. I cannot place the divisions, as I have observed before.

Q. What time did you first see the Formidable standing on the starboard tack to the southward?

A. While I was on board the Victory I saw her passing.

Q. Do you know whether she wore to the southward before the signal was made on board the Victory?

A. I do not know when she wore.

Q. How soon after the Formidable passed to leeward of the Victory, did the Victory wear?

A. She was wearing from the larboard to the starboard tack as I left her; the Formidable had just passed.

Q. President. How long was you on board the Victory?

A. Near an hour I should suppose.

President. Was there any conversation past between the Admirals Keppel, Campbell, and you, relative to the fleet that time?

K

A. Many

A. Many observations naturally past, but I cannot recollect them, particularly at this distant period.

Q. Did you see distinguishing lights on board the Victory on the 27th of July?

A. Yes, assuredly.

Q. Did you see distinguishing lights on board the Vice-Admiral of the Red that night?

A. Yes, I did.

Q. Did you see any on board the Formidable?

A. I did not.

Q. Was your situation such that you could have seen those lights if there had been any.

A. No, it was not; I lay through mistake the best part of the night on the Vice-Admiral of the Red's quarter, so that I could not see them.

Q. Did you see the Vice-Admiral of the Blue at day break in the morning of the 28th, and what was his position in respect to the Victory?

A. I did not observe the Vice-Admiral of the Blue on that morning at day break.

Q. When you did see him, what were his positions?

A. I do not recollect when or where.

•Cross-Examination.

Q. Sir Hugh Palliser. When you saw the Formidable, did she appear disabled in her sails and rigging?

A. Her sails were shattered as some other ships were—but I could not see the rigging at the distance I was from her.

Q. Did the Formidable seem to wear to stand from the enemy towards the Victory, when you was passing in your boat to the Victory?

A. I

A. I know not when she wore, it might be when I was in my boat, or when I was first on board the Victory.

Q. After you went on board the Victory, did the Arethusa stay by the Victory?

A. Yes, I believe she did.

Q. Did not the Victory and Arethusa stand directly towards the Formidable from the time you tacked under the Victory's lee-bow, till the Victory and Formidable passed each other?

A. I know nothing of the Formidable till seeing her pass the Victory's starboard beam, and therefore I cannot know the Arethusa was standing for her.

Q. After the Blue flag at the mizen peak was hauled down at 13 min. past three, as you have said, was it ever hoisted again till past six, (as appears by your minutes)?

A. I believe not.

Sir Hugh Palliser. Mr. President, there was a paper of signals delivered in at the former Court-Martial by the Mate of the Arethusa. I beg leave to have it shewn to Captain Marshall to have it identified by him, if it is the same that was delivered to Sir Thomas Pye, President of the late Court-Martial.

[Capt. Marshall having seen the paper, declared it to be the same, though he said it was incorrect, having some improprieties in it, which the Captain in reading over pointed out to the Court.]

Q. by the Court. Do you think that the Formidable was in such a situation on the evening of the 27th, as to have enabled her to have seen any signals from the Victory or the Arethusa?

Sir Hugh Palliser. I believe there is no doubt of that, I admit she could.

Mr. Graham.]

(72)

Q. Did you see the Formidable during the action of the 27th?

A. I did not, I saw her as she came out of action.

Capt. Marshall ordered to withdraw.

Mr. GRAHAM, Purser of the Arethusa, called in and sworn.

Q. Where was you stationed on board the Arethusa on the 27th of July, and what was your duty during that action?

A. On the quarter-deck, to take minutes of the signals.

Q. What is that paper in your hand?

A. It contains the minutes.

Q. Is it a paper of minutes of that day that you can swear to?

A. It is a copy of a copy of the original minutes, which I took on the 27th of July.

Q. Is it a correct one?

A. Yes, it is.

Judge Advocate. Give an account of those signals?

[Here Mr. Graham gave the same account of the signals as Capt. Marshall had done on his first day's examination.]

Q. Did you see the general signals repeated by the Vice-Admirals of the Red and Blue?

A. I did not, as I only looked at the Victory for signals.

President. Are those signals in a paper in your hand, a copy of a copy taken in your own hand writing?

A. Yes, they are.

Cross-

Cross-examined.

Sir H. Palliser. Is that copy an exact copy of the original minutes, or is it different in any part? If so, inform the Court what they are?

A. I have already said—I have no time, or times annexed to the pennants that were thrown out; when I took a copy from the original minutes, I took it for my private satisfaction, not for public inspection, and imagined, if I could give a particular account to my friends of the *general* signals which were made, the circumstance of particular ships signals would be a matter of no consequence; but I should further observe I had a general book, which was kept in the binnacle on the quarter deck, and if any public reference was to be made, it should be made to that book.

Discharged from farther attendance.

Hon. Captain WINDSOR, late Captain of the Fox,
called in and sworn.

Q. Did you receive any orders from Admiral Keppel in the course of the afternoon of the 27th of July?

A. Yes, I did.

Q. What time?

A. Nearly about five o'clock.

Q. What were those orders?

A. To stand to the Formidable with orders from Admiral Keppel to Sir Hugh Palliser, to acquaint him, that he only waited for him and his division to come into his wake, to renew the action.

Q. Did you commit those orders into writing?

A. No.

Q. From whom did you receive them?

A. From Admiral Keppel.

Q. Did

Q. Did you go on board to receive orders, or was it by hailing?

A. By hailing.

Q. At what time did you deliver them on board the *Formidable*?

A. At half past five nearly.

Q. Did you receive any answer?

A. I received an answer from Sir Hugh Palliser, "That he understood me very well."

Q. Was the *Fox* to leeward, or to windward when you received the answer?

A. To leeward.

Q. What was the distance of the *Fox* from the *Formidable* at that time?

A. So close as to becalm my sails by her.

Q. Was there any noise, so as to prevent their hearing the orders given?

A. None on board the *Fox*.

Q. Was there any on board the *Formidable* at that time?

A. After I delivered the message, the *Formidable's* company cheered the *Fox*, which, after I had got to a sufficient distance, I made our people return.

Q. Was the answer given before you received the cheer from the *Formidable*?

A. Yes, it was.

Q. Was the cheering so immediately upon the delivery of the message as to prevent any part of it being heard?

A. Certainly not.

Q. Did you keep close upon a wind?

A. The *Fox* was within hail, and close-hauled.

Q. Did you fetch within hail, and how near upon the larboard tack, or how near was you?

A. I

A. I could not fetch her on the larboard tack within hail.

Q. Did you heave the log, and at what rate did you go when you was passing from the Victory?

A. I did not heave the log; I should suppose we were going seven knots.

Q. How far did you stand beyond the Formidable on the larboard tack, before you tacked?

A. I cannot say.

Q. What sail was the Formidable under when you delivered the message?

A. Under her courses, as well as I can remember, her fore-top-sail being unbent; she had hands in her tops, but do not recollect any thing about her other sail.

Admiral Digby. Was you called to the Victory by signal?

A. I was.

Q. How far was you from the Victory when your signal was made?

A. Upon her weather-beam, about three quarters of a mile.

President. How long might you have been within hail of the Formidable?

A. Between two or three minutes, from my sails being becalmed.

Admiral Digby. How did the Formidable bear from the Fox at the time you saw the signal to bear down to the Victory?

A. I did not set her by compass; but to the best of my recollection she was well on the weather quarter, and at some distance, which I cannot well ascertain.

Q. After your answer from the Vice-Admiral of the Blue, did you see any signals made on board the Formidable, and if so, what were they?

A. I

A. I saw several pennants thrown out, but do not know what they were for.

Q. by the Court. How soon after were those pennants after you received the answer?

A. Almost immediately.

Q. When you was speaking to the *Formidable* was the signal for the line of battle flying on board her?

A. I have already said I do not know what signals she had thrown out.

Q. Did the *Formidable*, after you delivered the message, keep close on a windward, or edge away?

A. I perceived no alteration in her.

Q. Do you recollect any thing of the *Formidable's* being in the *Victory's* wake at any time in the evening of the 27th of July?

A. Not that I saw.

Q. President. Was there any message, or words passed between the *Formidable* and the *Fox* but what you have related?

A. None.

Court. From what part of the *Formidable* was the answer given to your message?

A. From the lower stern gallery; I received it from Sir Hugh Palliser.

Q. What sail had the *Victory* set when you received your message?

A. I think double reef top-sails and foresail.

Q. Was she going from, or by the wind at that time?

A. Close hauled, as near as I could judge.

Admiral Digby. What became of the *Fox* after you delivered your message, and did you attempt to return to the *Victory*?

A. Having

A. Having no orders to carry back to the Admiral, I did not go down to the Victory, but run a-head in my station, and there reefed my top-sails.

Q. How long was the Fox going from the Formidable into her station ?

A. About twenty-five or thirty minutes.

President. When you quitted the Formidable, how was the Vice-Admiral of the Red division situated with respect to the fleet ?

A. A-head of the Admiral at some distance.

Q. Did you see distinguishing lights on board of the Victory in the night of the 27th of July ?

A. At times I did.

Q. Did you see them that night on board the Queen ?

A. Yes ; I did.

Q. Did you see them that night on board the Formidable ?

A. No.

Q. Did you see the Formidable at day-break in the morning of the 28th ?

A. I cannot charge my memory in what situation she was in.

Q. In going from the Formidable into your station, did you go from the wind, or close hauled ?

A. Close hauled, I am pretty certain.

Q. Was any person in the stern-gallery with the Vice-Admiral of the Blue when you delivered your message ?

A. Not that I know of.

Q. Was the weather so quiet and still that you think your message was distinctly heard on board the Formidable ?

A. My message was certainly heard, or I could not have received so distinct an answer.

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Cross-

Cross-Examination.

Sir Hugh Palliser. When Captain Windsor received his message from the Victory, was the Fox upon her weather or lee-quarter, or where was she?

A. Upon the lee-quarter of the Victory, close to her.

Q. How many ships were then formed a-stern of the Victory?

A. I do not remember.

Q. Do you remember there were any?

A. Certainly there were some.

Q. Can you name the ship next to the Victory?

A. No, I cannot.

Q. When you left the Victory to go to the Formidable did you wear, or tack?

A. I wore.

Q. Did you weather the ships next a-stern of the Victory, all of them, or any of them, or how many?

A. I could not weather one.

Q. Are we to understand that you passed to leeward of them and a-stern before you hauled your wind close?

A. I was obliged to pass to leeward and a-stern of them all; I have already said so.

Q. When you spoke to the Formidable, did not you observe a number of men that were repairing the sails and shrouds in the fore, main, and mizen shrouds, which might have the appearance of manning ships, and occasion the mistake of cheering?

A. There certainly were men in your shrouds fore and aft, and I did not see them till after I had received the answer.

Q. Did you see any men in the tops?

A. There certainly were; and in the fore-top, about the fore-top-sail-yard, as far as I can recollect.

The

The Court. Captain Windfor, if farther required, will have previous notice given him.

He withdrew.

Lieutenant ALBEMARLE BERTIE, late of the Fox, called in and sworn.

Q. Do you recollect the Fox being called to the Victory on the afternoon of the 27th of July ?

A. Yes, I do.

Q. Do you recollect the message sent to the Vice-Admiral of the Blue.

A. Admiral Keppel ordered us to go to Sir Hugh Palliser, and to tell him that he only waited for his coming down into his wake to renew the action again.

Q. At what time was this ?

A. I think between five and six.

Q. Was the message delivered to the Vice-Admiral of the Blue, and at what time ?

A. I think it was about half an hour from the receiving to the delivering of the message ; Captain Windfor delivered it twice distinctly, and I repeated it as punctually ;—we were answered from the stern-gallery by the Vice-Admiral—" I understand you perfectly."

Q. How near was the Fox to the Formidable ?

A. So near, that our words could not be misunderstood ; and on the oath I have taken, there was such a silence at that time on board the Fox, that a pin might be heard to drop.

Q. Was there any noise on board the Formidable ?

A. I think there was, and that a considerable one ; but the answer we received assured us the message was heard.

Q. Did you know who delivered the answer from the Formidable's stern gallery ?

L 2

A. I

A. I had never seen Sir Hugh Palliser : but I was told by some of our officers that it was him.

Q. What sail was the *Formidable* under when you delivered the message ?

A. I do not know.

Q. Did the Vice Admiral of the Blue set any additional sail after you delivered the message ?

A. We shot a-head, and being under a press of sail ourselves, I did not attend to the *Formidable* .

Q. What situation did the *Formidable* appear to be in, in respect to her rigging and sails, when you delivered the message ?

A. There were hands in all her tops, and upon her top-sail yards ; every body seemed to be employed repairing and refitting the damages the ship had received.

Q. What was the situation of the Vice-Admiral of the Red's division on your return from delivering the message ?

A. I think they were shooting a-head of the Admiral's division.

Q. Did you see the *Formidable's* lights on the night of the 27th ?

A. We were a-head of her, consequently we could not see them.

Q. How far were you from the *Victory*, when the *Fox* reefed her top-sails, after speaking to the *Formidable* ?

A. Three or four miles.

[This evidence was likewise asked several other questions which were put to Captain Windsor, to which he gave similar answers.]

Cross-Examined.

Sir Hugh Palliser. Did it appear to you that we were bending our fore top-sail at that time ; you say there were men upon the fore top-sail yard ?

A. I

A. I believe they might be bending.

Q. Do you remember that you said on a former examination, that you thought we were bending the fore-top-sail.

A. I believe I did ; and I rather think now they were bending the fore-top-sail.

[The same questions were likewise asked in the cross examination, which he answered exactly as Captain Windsor had done.]

Captain JARVIS of the Foudroyant called in and sworn.

Captain Jarvis desired the order for the present Court-Martial might be read.

It was read accordingly.

Captain Jarvis. May I be permitted to ask if the printed minutes are looked upon as authentic ?

Court. No. the original minutes are.

Q. Did you see the Formidable, the 27th of July, after coming out of the action, and what was her position ?

A. I did not see her after.

Q. Did you see the Formidable upon the larboard tack ?

A. No, not after coming out of action.

Q. Were any signals made by the Admiral after the rear of the fleet had passed the French line ?

A. Yes, to wear.

Q. Did you see the signal repeated on board the Arethusa ?

A. No, I did not ; I saw it flying on board the Victory.

Q. How long did the Victory continue upon the larboard tack ?

A. I can't say precisely.

Q. What

Q. What was the next signal on board the Victory, after the signal to wear?

A. A signal for the line of battle, immediately after the Victory's wearing.

Q. How soon after you came out of action did you see the Formidable, and what tack was she upon?

A. I did not see her till near three o'clock, and then she was on the starboard tack.

Q. What tack was the Victory on at that time?

A. On the larboard.

Q. Did it appear to you that the Formidable repeated the signal for the line of battle?

A. I did not see her repeat it.

Q. Do you think she could see the signal as she passed the Victory?

A. Yes, certainly.

Sir Hugh Palliser. It is admitted.

Q. When the Victory wore from the starboard to the larboard tack, did she do it by signal?

A. By signal she did it.

Q. Was the signal repeated, and by whom?

A. I can't speak to the repetition of the signal.

Q. Were there any other general signals made on board the Victory, while on the starboard tack, till dark, and what were they?

A. The signal for the line of battle was kept flying till dark, except a small interval of eight or ten minutes, which I can't speak precisely to.

Q. Did the Vice-Admiral of the Blue repeat the signal for ships to come in the Admiral's wake?

A. He did,

Q. Was the signal for the line of battle repeated by the Vice-Admiral of the Blue?

A. I did not see it repeated.

Q. Did you take notice of the Fox coming under the Admiral's stern, and at what time was it?

A. I

A. I did not see the Fox particularly ; I saw frigates^s passing and repassing.

President. Was the Foudroyant the nearest ship a-stern of the Victory after you wore to the southward, and did she continue so all the evening ?

A. She was after the Admiral wore the second time, and was on the starboard tack.

Q. Did you observe the Fox stretch away when upon the starboard tack, to the Formidable ?

A. I cannot recollect, for I since find I often mistook one frigate for another.

Q. When the Admiral was standing to the southward, on the starboard tack, what number of ships were formed in the centre division, at six o'clock ?

A. I believe all the ships were in their station at that time, of the centre division, except the Sandwich and Vengeance, the latter was in the Admiral's wake at that time ; but whether she closed with the ship that was to lead her, it was difficult for me to ascertain.

Tuesday, April 20.

Captain Jarvis called into Court again.

Captain Jarvis desired the question at the close of his examination of yesterday might be read. The question and answer were read accordingly.

Captain Jarvis. In mentioning the Sandwich, I did not mean to say she was not in her station ; she was not connected with the centre division.

Q. What was the position of the Red division at six o'clock ?

A. I can't exactly say.

Q. Were the enemy formed in regular line of battle at that hour ? and how did their headmost ship bear from the centre division of the English fleet ?

A. The

A. The van of the enemy appeared to be in a line of battle, steering nearly parallel to part of our centre division, but cannot say to what number of ships.

Q. What was the distance from the centre division?

A. About two miles, I believe.

Q. What was the position of the Vice-Admiral of the Blue at that time?

A. Upon the weather quarter of the Foudroyant.

Q. At what distance?

A. About two or three miles.

Q. Was the British fleet any time on the 27th in a situation to attack the French fleet if he had come down?

A. I can't speak positively.

Q. What were the number of ships of the Vice-Admiral of the Blue's division at that period with him?

A. The greatest part were with him, but I can't ascertain the number.

Q. Did it appear to you that the disobedience of the Vice-Admiral of the Blue was the reason the attack was not renewed.

A. It was the reason that the fleet was not connected.

Q. At what hour did the Formidable take her station on the evening of the 27th?

A. At no hour that I saw.

Sir Hugh Palliser. I admit that the Formidable did not get into her station after the Victory passed her on the starboard quarter, and left her so far behind.

[This being required to be entered on the minutes, the Court was ordered to be cleared.]

On the re-admission of the audience, the Judge Advocate said

The President advises Sir Hugh Palliser to defer his reasons till he has occasion to make his defence.

Q. How

Q. How long was it after the action that the Foudroyant was fit for action again?

A. At three o'clock.

Q. When the Victory wore to southward, did she edge to the wind?

A. Soon after she wore she did.

Q. At what rate did the Foudroyant go, and what sail was she under?

A. I can't say what rate she went; the log-book would have expressed it; but not more than three knots; her sails varied; her top-sails double reefed, and not near hoisted up, being much shot; her fore-sail sometimes up, sometimes down.

Q. Do you recollect what rate she went after hauling her wind, and if then under the same sail?

A. I hauled the foresail up to keep a-stern of the Victory, in our station; as to her going, I cannot speak; she carried her helm a-lee, consequently her way could not be much,

Q. What was the position of the Vice-Admiral of the Blue in respect to the Foudroyant, when on the starboard tack?

A. I can't speak to time; but the Vice-Admiral of the Blue encreased his distance very little, and altered his bearings very little.

Q. Was the Formidable a-stern, or how?

A. On the weather quarter.

Q. At what time did the Admiral haul his wind?

A. I can't say.

Q. Had you encreased your distance from the Formidable, during the time of your going large, until you hauled your wind on the starboard tack?

A. The distance was increased unquestionably, the bearing altered very little, for the Vice-Admiral of the Blue was very near the Admiral when he wore, the Admiral steering large, the Vice-Admiral keeping his wind; I do not know the time exactly that afternoon.

M

Q. Did

Q. Did the distance encrease till you hauled your wind?

A. Yes.

President. What sail had the Formidable set at the time you hauled your wind?

A. Her fore top-sail was unbent; I cannot speak to the rest of her sails.

Q. When was the centre and van formed in line of battle in the afternoon?

A. I have described the centre already; but the time when the Van got into their station I cannot describe.

Q. Did the sail the Victory carried on the 27th, between five and seven o'clock, prevent the Vice-Admiral of the Blue from getting into his station?

A. I know of no impediment why he should not have got into his station.

Q. At what hour were the particular ships signals made to bear into the Admiral's wake?

A. I have no minutes, therefore cannot ascertain the hour.

Q. Were all or any of the Blue division in the Admiral's wake, in consequence of these signals?

A. I saw some of them bear away in consequence of their signals.

Q. Did you see the distinguishing lights on board the Victory, on the night of the 27th of July?

A. Yes, I did very distinctly.

Q. Did you see them on board the Queen that night?

A. I cannot say I did; the Victory was so high, and her stern so high, it intercepted other ships from my sight.

Q. Did you see them on board the Formidable that night?

A. No, I did not.

Judge Advocate. Describe the position of the Vice-Admiral of the Blue, when you saw him next morning, the 28th at day break?

A. I

A. I do not recollect the circumstance of his disposition at that time.

Q. At what time did the Vice-Admiral of the Red pass the Foudroyant to take her station a-head of the Victory?

A. After five o'clock, to the best of my recollection.

Q. At what time was you nearest to the Formidable?

A. At three o'clock, or a little after.

Q. Did you make any observations of the Formidable?

A. I was too particular in keeping my own station to make any observation; the Foudroyant and Formidable passed the Victory very near, in wearing from the starboard to the larboard tack.

Cross-examined by Sir Hugh Palliser.

Q. When you passed the Formidable so near as you have described, did she appear to you have suffered much?

A. She certainly did, having her sails very much shot.

Sir Hugh Palliser. I will not trouble Captain Jarvis with any more questions now, being apprehensive I may have occasion to call him again in two or three days.

Captain Jarvis. I will attend with the greatest patience, though it will be highly inconvenient to me; but if I could be permitted to go to London for a day or two I should be glad, having some business of consequence to execute there.—I will leave my address with the Judge Advocate.

Sir Hugh Palliser. I beg the Captain may have leave to go, and if I shall have occasion for his further attendance I will give him due notice of it.

The Court consented, and he withdrew.

Sir ROBERT HARLAND called in and sworn, and the Judge Advocate read over to him the order of the Admiralty.

Q. Did you see the Formidable in the time of action, and what was your observation relative to her behaviour therein ?

A. I saw her when she came out of the cannonade, —my observation was, I think there was merit, and in firing the Formidable was equally entitled to that credit with other ships ; more was not required ; it established the good behaviour of every individual concerned in command ; but the Court must have observed, that in pursuing the enemy that day, a bold, a necessary, and a noble stroke of war was required, —where nothing but risque, as it appeared, could stop the French fleet from getting off ; the great and decisive strokes of the day were to follow by closing with the enemy, and fighting it out.

Q. Did you see the Formidable on the larboard tack when she came out of action ?

A. I never saw her on the larboard tack.

Q. At what time did you see her wear, and lay on the starboard tack after coming out of action ?

A. When I passed her to leeward to form a-stern of the fleet with my division, my division was then on the starboard tack, standing to the southward.

Q. Did you see the Victory on the larboard tack, and what signals had she then flying ?

A. Yes, I certainly did see her on her larboard tack, but I did not see the signals, being a-head of the Victory.

Q. At what time was it that you passed the Formidable to take your station in the rear ?

A. Between three and four o'clock, to the best of my recollection.

Q. At

Q. At what time did the Red division quit their station to go to the head of the rear into the center ?

A. Five o'clock.

Q. Was the sail the Victory carried such as to prevent the Vice-Admiral of the Blue, and his division taking their station in the line ?

A. The Vice-Admiral of the Blue and his division were to windward; the Commander in Chief carried but little sail, consequently, if the Vice-Admiral of the Blue had made proportionable sail, nothing would prevent him that I know of.

Q. What was the position of the center ship of the Red division relative to the Victory at six o'clock, and how far distant was she from her ?

A. At six o'clock they were nearly in a line in their station a-head.

Q. At what time was the Red division formed in a regular line of battle a-head of the center, and what number of ships were in it ?

A. All the division except the Monarch and Berwick (and I am not sure whether they were or not at that time) were formed about six o'clock; I would not confine time to half an hour.

Q. When you got into your station in the line of the evening of the 27th, was there time enough to renew the action if the Vice-Admiral of the Blue and his division had been in their station, in the line ?

A. It was not dark on the evening of the 27th of July till near nine o'clock, therefore I think there was full time if the French fleet had remained where they were.

Q. What was the position and distance of the headmost ship of the French fleet, at the time the Queen and the rest of the Red division were formed in a line ?

A. The

Sir R. Harland.] (90)

A. The French fleet were ranging up in a parallel line, at less than two miles of the headmost ship, at the time when I got in my station, hauled up a-head of the Victory, and pretty near a-breast of the Queen.

Q. Was the French fleet at that hour in regular line of battle?

A. As to direction they appeared to me they were; but not as to distance, they were not closed.

Q. What was the position and distance of the Vice-Admiral of the Blue, and his division at that hour?

A. I know they were to windward of the Red division, but I was employed upon my own division, and observing the French line; and the Court will find more exact information of the distance than they can obtain from me.

Q. Did you see the general signals repeated or obeyed by the Vice-Admiral of the Blue, on the afternoon of the 27th of July?

A. The position I was in, allowed me to see all the signals:—after the Admiral wore to the southward, the signal was made to come into the Victory's wake; I saw it repeated by the Vice-Admiral of the Blue, but I did not see it obeyed either by the Vice-Admiral of the Blue, or his division. The signals that followed after that time, were repeated by a part of the Vice-Admiral of the Blue's division.

Q. Was the signal for the line of battle obeyed by the Vice-Admiral of the Blue?

A. As I understand that signal not obeyed by the Vice-Admiral, it was repeated by the Vice-Admiral of the Blue, or his division.

Q. Was the signal for the line flying on board the Queen all the afternoon of the 27th, and at what time was it hauled down?

A. It

A. It was flying, not hauled down. I never saw the Vice-Admiral of the Blue repeat the signal for the line.

Q. Had the signal for the line been flying on board the Formidable, could you have seen it?

A. I did not expect to see it flying there; therefore I did not pay particular attention.

Q. Why did you not expect it?

A. I had then, and I have now too great an opinion of the knowledge of the Vice-Admiral of the Blue, to think that he would have repeated that signal, which, in my opinion, would have commanded his division to him, when he made no attempt, that I saw, to comply with it himself.

Q. Did you perceive any impediment to the Vice-Admiral of the Blue's getting into his station in the afternoon?

A. The Formidable had not lost a mast, or even a yard, that I saw, therefore there was no material reason appeared to me for her not doing it.

Q. Was it your opinion that the Vice-Admiral of the Blue's not bearing down into his station was the reason the attack was not renewed on the evening of the 27th?

A. If the Vice-Admiral of the Blue had been in his station in the line, and his division, to suppose that the attack would not have been renewed, is supposing that the Commander in Chief would not have renewed it at all.

Q. What was the situation of the Formidable when you saw her on the morning of the 28th?

A. I don't recollect making any observations of the Formidable; the thing was over, I looked no further to her.

Q. Did you carry distinguishing lights on board the Queen on the night of the 27th?

A. Yes,

A. Yes, and every night.

Q. Do you know any thing reprehensible in the conduct of Sir Hugh Palliser in, before, or after the action of the 27th of July more than you have already related ?

A. I should be very sorrow to know more than the Court does already know ; they have the evidence of great and able officers for their information ; and whoever takes in a news-paper, may read what the evidence has been, though it seems to me to have been artfully, or stupidly mangled in all the papers ; but as the Court have the whole evidence before them, and are every way capable of deciding thereon, I have nothing farther to say.—[Here the Court was cleared, in order, as it was supposed, to consider whether, at the request of the witness, this latter part of his narrative should stand on the minutes, which was opposed by several of the members.]

The audience being re-admitted,

Judge Advocate to Sir Robert Harland. Is the Court to understand from what you have said, that you know nothing more reprehensible in the conduct of Sir Hugh Palliser, in, before, or after the action of the 27th of July, than you have already related ?

A. My answer is, so far from endeavouring to recollect new matter, it has been my business to forget what I thought amiss, as far as I could.

Sir Hugh Palliser. I have nothing to say to Sir Robert now ; I shall call upon him another time.

Q. When you past nearest between the Victory and the Formidable, to take your station a-head, what distance might you have been from each of them ?

A. At equal distances.

Q. What distance might that be, Sir ?

A. About one mile and a half ; I do not speak from accurate observation.

Q. When

Q. When the Red division got into the line of battle, the evening of the 27th, what sail was you under, and how many knots did you go?

A. As well as I can recollect, about two knots, under three, with the sail I then carried, which was such a sail as to enable us to keep our station in the line.

Withdrew.

Hon. JOHN LEVESON GOWER, late of the Valiant, called in, and sworn.

Q. Did you see the Formidable on the larboard tack when she came out of action on the 27th of July?

A. No.

Q. Did it appear to you that the general signals made on board the Victory, were repeated on board the Formidable at any time that afternoon.

A. I never saw any thing but a blue flag at the mizen peak; I did not see her till after I had made sail about three o'clock.

Q. When you first saw the Formidable, what sail was she under?

A. Her fore-top-sail was unbent; I am not clear what sail she had set.

Q. What was the position of the Valiant when you was on the starboard tack relative to the Victory?

A. Next a-head to her in the line.

Q. Did you pass near the Formidable?

A. No.

Q. What time did the Red division pass the Valiant in going from the stern a-head of the Victory, to take their station in the van?

A. After five o'clock, I fancy.

Q. What was the distance and position of the Vice-Admiral of the Blue at the time with respect to the Valiant?

N

A. I

A. I did not see her by compass; I should think two or three points abaft the beam, about two miles and a half, or three miles.

Q. Did the Formidable appear not to be in a condition to obey the signals made that afternoon?

A. All her masts and yards were standing, and only her fore top-sail unbent that I recollect.

Q. Did it appear to you that the Vice-Admiral of the Blue's not obeying the signals was the reason the attack was not renewed that afternoon?

A. I thought so.

Q. What hour did the Formidable get into her station in the Admiral's wake in the evening?

A. I never saw her get into her station.

Q. At what rate did the Valiant go, and what sail was she under?

A. The log was not hove; we were always backing, and filling till dark.

Q. Was the sail that the Victory carried such as to prevent the Formidable getting into her station?

A. I should suppose the Formidable would fall much to leeward to get into her station.

Q. Did you see any efforts she made use of to get into her station?

A. I did not see her position.

Q. What was her position in respect to the Valiant when you first saw her on the morning of the 27th?

A. I don't remember noticing it.

Q. What time was the Red division formed in their station a-head in the afternoon of the 27th?

A. About an hour after passing the Valiant.

Q. What was the position and distance of the van of the headmost ship of the French fleet at this time?

A. The fourth or fifth ship was a-breast of the Valiant about two miles distant or better.

Withdrew.

Captain

Captain MACBRIDE of the *Bienfaisant*, called in, and sworn.

Q. Did you see the *Formidable* when she came out of action on the afternoon of the 27th of July?

A. No.

Q. Did it appear to you that the general signals made on board the *Victory* were repeated by the *Formidable* any time that afternoon?

A. I saw the signal for coming into the wake of the *Victory*, but none else.

Q. How soon after the *Bienfaisant* came out of action?

A. The signal was not hauled down; I was determined to follow Sir Robert Harland; the signal for battle was soon hauled down, and that made for the line a-head; I bore away, and determined to join my own division, and then I observed the *Formidable* leading upon the starboard tack.

Q. At what time was this?

A. Two o'clock I think.

Q. What fail was the *Formidable* then under?

A. Top-fail and fore-fail, her jibb shot away, hanging off the end of the boom.

President. What distance was the *Formidable* from the *Bienfaisant*?

A. About two miles, or two and an half; my attention was taken up in saving a man who was floating along side in a tub, and we threw out a boat to save him.

Q. What was the position of the *Bienfaisant*, in respect to the *Victory*, when you was on the starboard tack.

A. After the *Formidable* and *Victory* had passed each other, finding the *Formidable* continued on the

starboard tack, and finding Sir Robert Harland was gone into the rear, I formed a head of the Victory, imagining the line was going to be inverted, and I continued so till about five o'clock, to go into our station.

Q. What time did the Red division pass the Bienfaisant in going a-head of the Victory to take their station in the van?

A. Between five and six o'clock they weathered me, about a mile and a half, or two miles.

Q. What was the position and distance of the Vice-Admiral of the Blue with respect to the Bienfaisant at this time?

A. Upon my weather-beam about three miles: the Red division passed between us.

Q. Was you a-head or a-stern of the Victory?

A. The sternmost ship that was formed.

Q. Did the Formidable appear to you in a condition not to obey the signals made that afternoon?

A. She did not appear so to me; her fore top-sail was unbent.

Q. Did it appear to you that the Vice Admiral of the Blue's not obeying the signals was the cause that the action was not renewed that afternoon?

A. I believe it was.

Q. At what hour did the Formidable get in her station in the Admiral's wake that afternoon?

A. I did not see her get in at all.

Q. At what time was the division a-head of the line in the center?

A. Six o'clock.

Q. At what rate did the Bienfaisant go when she bore away, and what sail was she under?

A. Five miles an hour I suppose; I have no log; I was going large.

Q. How

Q. How long did the Bienfaisant continue to bear away in the evening?

A. 'Till I joined my Admiral; about half an hour.

Q. After the Bienfaisant had joined the Victory, what course did you steer?

A. Hauled the wind as she did.

Q. After the Victory hauled her wind on the star-board tack, was the sail she carried such as to prevent the Formidable getting into her station?

A. No, by no means; she kept us very good company without her fore top-sail.

Q. What was the position of the Formidable, when you first saw her the morning of the 28th?

A. At day-light my attention was taken up with the French ship that was left behind, that shewed lights a-breast of me. I concluded that the Admiral would make my signal to chase, which was done. On my return, I saw the Formidable on the Victory's weather quarter in the South-west.

Q. Did you see the distinguishing lights of the different Admirals on the night of the 27th?

A. The Victory's I saw very plain, but no other lights.

Captain Macbride withdrew, and was discharged from any farther attendance.

Wednesday, April 21.

Capt. ISAAC PRESCOTT, late of the Queen, called in, and sworn.

Q. Did you see the Formidable on the larboard tack after she came out of action?

A. No.

Q. At what time did you first see her on the star-board tack, after she came out of action?

A. I

A. I saw her immediately as she was coming out of action on the starboard tack. I cannot speak as to time, but I never saw her on the larboard tack.

Q. Did you see the Victory on the larboard tack, and what general signals had he then flying?

A. I did see the Victory on the larboard tack; about three o'clock she made the signal to wear to the southward upon the larboard to the starboard tack, which was repeated; and as she was wearing I observed to Sir Robert Harland, that the Victory had the signal flying for the line of battle, which we likewise repeated immediately.

Admiral Digby. At the time you saw the Formidable come out of the action, where was the Victory?

A. I really cannot recollect.

Q. When you saw the Formidable come out of action, what condition did she appear to you to be in, respecting her sails and rigging?

A. Her fore-sail top-sail yard appeared to be on the cap, or near it. I made no other observation of her.

Admiral Digby. As you saw the Formidable in action, in what manner did it appear to you that she was engaged?

A. Very handsomely and properly.

Q. At what time was it that you passed the Formidable to take your station in the rear?

A. To the best of my recollection between half past three and four o'clock.

Captain Duncan. Was it by order from the Admiral that you took your station in the rear, and how were those orders conveyed to you?

A. By the Proserpine frigate about three o'clock, and the orders were conveyed to us by hailing.

Captain Duncan. Was there any cheer between the Proserpine and the Queen?

A. None.

Q. At

Q. At what time did the Red division quit that position to form a-head of the center?

A. I can't speak precisely, but about half past five, I think.

Q. When you passed the Victory to take your station a-head, did she carry such sail as to prevent the Formidable from taking her station?

A. Certainly not.

Q. When the Queen passed between the Victory and the Formidable to take her station a-head, what distance might she be from each of those ships?

A. I cannot speak as to distance; we passed to windward of the Victory, and the Formidable was to windward of us.

Q. Was any message received on board the Queen, from the Victory, after that, sent by the Proserpine, if so, at what time was it received, and what was the message?

A. At half after five nearly, the Milford brought us orders from the Admiral to make sail a-head, and form in our station; this message was also delivered by hailing.

Q. After the message was received, how long was it before the Red division got into their station, in a line a-head of the center?

A. To the best of my recollection, about a quarter after seven o'clock.

Q. What sail did you keep under, and at what rate did you go till dark, that afternoon?

A. I can only speak from the log: the first hour after we gained our station we went three knots, and from that time two knots four fathoms to one knot six fathoms; as to the sail, we had double reefed top-sails and fore-sail; sometimes the mizen top-sail aback, and sometimes full, to keep our station.

Q. When

Q. When you got into your station in the line, on the evening of the 27th, do you think there was daylight enough to have renewed the action?

A. I do.

Q. What was the position and distance of the headmost ships of the French fleet in respect to the Queen at the time the Red division were formed in a line?

A. I cannot answer that question positively in respect to the Queen.

Q. Were the French fleet in a line of battle?

A. They were, and to leeward.

Q. What was the situation, and position of the Vice-Admiral of the Blue at that time?

A. I did not attend to him.

Q. Did you see the signals repeated, or obeyed by the Vice-Admiral of the Blue that evening?

A. I did not observe them.

Q. Was the signal for the line flying on board the Queen all the afternoon, and when was it hauled down?

A. It was flying the whole night, to the best of my recollection, as well as all the afternoon.

Q. Did you see any impediment to the Vice-Admiral of the Blue's getting into his station that afternoon?

A. That is a question of much delicacy. I did not observe any other but her fore top-sail being unbent.

Q. Did you carry distinguishing lights on board the Queen on the night of the 27th?

A. I did.

Q. What position was the Formidable in when you first saw her on the morning of the 28th?

A. I never looked at her at all.

Q. What was the situation of the Queen in respect to the Victory, on the morning of the 28th?

A. I

A. I really do not know, but I wish to assign my reason to the Court: having been very much fatigued by my duty of the preceding days, the Admiral put his hand on my shoulder, and insisted upon my going down, telling me he would send for me immediately when he wanted me.

Cross-examined.

Sir Hugh Palliser. I think you said you saw the signal for wearing, and the signal for the line at the time the Victory was wearing; might not those signals have been up before that time?

A. I think the signal for the line might, as I did not see when it was hoisted; I wished it to be understood so before.

Q. Did you see the signal for wearing hoisted?

A. We heard the gun fire for wearing which drew our attention, when we first saw the signal; it might have been hoisted before.

Q. Did you observe the Blue flag at the mizen peak at the same time with the signal for the line, and at that time, or how soon after?

A. It was almost immediately that I saw it with the signal of the line; it was added then to the signal of the line about half after three o'clock; we repeated it in the Queen.

Q. At the time you did see it, was not your division considerably to windward of the Victory?

A. That part of the division with the flag, was to windward of the Victory.

Q. How many were there?

A. Seven, to the best of my recollection.

Q. Was not the Formidable the last ship that left the enemy, and joined the Victory?

O

A. She

A. She was the last I saw that fired upon the enemy; I do not know of her joining the Victory.

Q. You have said that the sail the Victory carried was not such in your opinion as to prevent the Formidable from coming into her station; I would ask therefore of you, if you know any thing of the condition of the Formidable at that time?

A. It is impossible I should know any thing of the condition of the Formidable at that time, but from my own observation.

Q. At the time you speak of the Red division being formed a head, I would ask whether the whole was formed?

A. I have answered that before, that I cannot recollect; having made no observation.

Q. Was it not very cloudy and squally on the evening of the 27th?

A. It was cloudy, and blew fresh, and had the appearance of more wind.

President. Do you mean the whole afternoon, or the evening?

A. I mean in the evening only, because from twelve to three and four o'clock in the morning we went only one knot six fathoms; when under the same sail I had gone four knots before.

Withdrew.

Sir CHARLES DOUGLAS, late Captain of the Stirling Castle, now of the Duke, called in and sworn.

Q. After coming out of action on the 27th of July, was the Stirling Castle the ship you then commanded, one of the number that followed the Vice-Admiral of the Red, and tacked, and stood after the enemy?

A. She

A. She was.

Q. When you first saw the Formidable, what tack was she on? Did she appear to you much disabled?

A. When I first saw the Formidable, I was standing to the southward again on the starboard tack, following Sir Robert Harland; I do not recollect at what time I repassed the Formidable, but it was then I first saw the Formidable, and on the starboard tack; she appeared to have suffered considerably in battle in her sails and rigging; and thus I repassed to leeward of her.

Q. What tack was the Victory then on, and what general signals were then flying on board her?

A. She was also on the starboard tack; the signal for the line of battle, and the Blue flag at the mizen peak for ships to bear down into his wake were then flying.

Admiral Digby. How was the Formidable at that time situated with respect to the Victory, and when you first saw those signals flying?

A. Broad upon the Victory's weather-quarter, when I first saw the Formidable—I cannot at this distance of time ascertain how many points abaft her beam.

Q. Can you speak to the distance?

A. I cannot positively ascertain the distance; I should think rather more than less of two miles.

Q. Did the Formidable appear to you to have got into her station in the afternoon in obedience to the signals then flying?

A. No.

Q. What time in the evening did you get into your station?

A. I do not positively recollect, but I got into it as soon as I could, and as nearly as the slow progress,

and therefore irregular way of the divisions did with safety admit.

Q. Did you see any impediment to the *Formidable's* getting into her station on the afternoon of the 27th?

A. I am not aware of any.

Q. Did you see the distinguishing lights on board the *Queen* on the night of the 27th?

A. I did frequently.

Q. Did you see them on board the *Formidable* that night?

A. Am I allowed to allude to the former minutes?

Judge Advocate. No, Sir.

A. I did not see the *Formidable's* lights; I did not see her during the night, till first dawn of the day of the 28th, when I observed a ship coming up, upon the weather quarter of the *Stirling Castle*, having a flag at her fore top-mast head, but having neither distinguishing lights burning, nor ensign flying.

Sir Chal. Ogle. Did you know that ship to have been the *Formidable*?

A. I did: I am perfectly satisfied thereof.

Sir Chal. Ogle. By what circumstances are you enabled to say positively it was the *Formidable*?

A. From having after she passed along before my beam towards the weather-bow (I do not know exactly how many points) a Blue ensign flying, and then by distinguishing clearly the flag at the fore-top was Blue, which I had not been able to see until she passed me before my weather-beam.

Q. Was she a three deck ship?

A. Most undoubtedly, having lights on her middle deck.

Admiral Digby. How was you situated in respect to the *Queen* and *Victory* at that time?

A. I

A. I don't positively recollect how the Stirling Castle was then situated with respect to the Queen and the Victory, not having my eye at that time fixed on them; I was rather on the weather quarter of the Berwick, my immediate leader in the line of battle, whom I ever kept in my eye, until the ship in question claimed an equal share of my attention; I beg leave to add, that in bearing up as the day advanced to get more precisely into my station, and that I could with safety do it; and seeing the ship alluded to, with her ensign and Blue flag, I could not help wondering, without accounting in my own mind, how it happened that the two Vice Admirals were so near each other!

Q. How was the weather on the evening of the 27th, and at the time you saw the Formidable at the dawn of day?

A. I think it was a little squally, sometimes partially hazy, so as to conceal for some little time one ship, and admit of another being seen, to the best of my recollection.

Sir Chal. Ogle. Describe the position of the three divisions as nearly as you can, as the day came on?

A. The center and the van divisions were in a line of battle to the best of my knowledge and belief, as nearly as their slow sailing did admit of their keeping themselves, but I cannot, with any degree of precision, speak as to the rest of the fleet, agreeable to the signal of the line of battle then flying; though I did see other ships, I can't say how many on my weather quarter, soon after I first got sight of the Formidable.

Sir Chal. Ogle. Did you at any time perceive on the morning of the 28th as the Formidable was passing the Stirling Castle, as the day came on, that the
Formidable,

Formidable, on perceiving her mistake, endeavour'd to regain her station ?

A. After having been fully satisfied of that ship's being the Formidable, by the display of her Blue ensign, and the colour of her flag at the fore-top-mast head ;—being quite at ease as to her identity, I took no farther notice.

Q. What time in the evening of the 27th, did the Red division get into their station in the line of battle ?

A. I do not recollect.

Q. Do you know what time the Monarch and Berwick got into their stations in the line of battle on that afternoon ?

A. I do not.

President. Was you one of the division formed a-stern of the Victory ?

A. I was : I would farther observe, that the Formidable must have been seen from the Berwick, my immediate leader. If the Court should think it necessary, there are two persons on board the Duke whose evidence may be adduced in testimony to the Court respecting the situation of the Formidable, as I have described, on the morning of the 28th.

Capt. Peyton. There can be no occasion, Sir, to bring evidence in support of what you speak so positively of.

Cross-Examined.

Sir Hugh Palliser. You say you don't know whether the Berwick got into her station before night ?

A. I don't.

Q. You have described the weather being squally and hazy, so as to intercept the view of the ships ; might not you, under those circumstances, be deceived

ceived in imagining you saw a Blue flag at the fore-top mast head ?

A. I have said it was squally and partially hazy, to the best of my recollection ; but that did not operate with regard to the first view I had of the flag at the Formidable's fore-top-mast head, the weather being then clear in that quarter, though hazy in the opposite one ; moreover, the day was just beginning to dawn, so that I could not be mistaken as to the flag in question being then flying, though I could not at first ascertain the colour.

Q. You mentioned that ship having no ensign, nor distinguishing lights :—do you take that to be a proof of its being the Formidable, or a cause of doubt ?

A. I did then, because thereof, consider it as a cause of doubt, and was therefore not without suspicion, that the French, by having made a trip on the larboard tack, had possibly doubled upon our rear, in order to regain the weather-gage ; in consequence thereof I ordered such of our preparations for battle as had been for some time discontinued to be re-assumed, excepting, to the best of my remembrance, the opening of my lower deck ports, and consequently of running out the lower deck guns ; but having traced this ship forwards, as already described, there was not the smallest doubt left upon my mind of its being the Formidable.

Q. You mentioned having seen her afterwards, having a blue ensign ; and that before she had no ensign ; and this you mention as a confirmation of, in your opinion, of its being the Formidable ; does not every ship in the Blue division wear a blue ensign as well as the Formidable ?

A. Yes ; but the Formidable alone wears a blue flag at the fore-top-mast head.

Q. Do

Q. Do you recollect seeing any ships of the Blue division under the Sterling Castle on the morning of the 28th, particularly the Robuste ?

A. I remember, as I think I said before, to have seen ships pass to windward of the Stirling Castle after having first seen the Formidable, but no one of these passed so near to me as to have particularly attracted my attention.

Q. Do you remember nothing at all about the Robuste at that time in the morning ?

A. I do not, it was impossible for me to know any ship by name at that time.

Q. You said you saw other ships passing, did you mean to go a-head or to go a-stern ?

A. Passing to windward of me, going forwards.

Q. At what distance do you reckon that ship had passed a-head before the Stirling Castle's beam, when you saw the blue flag and ensign flying ?

A. I cannot speak as to the distance she was from me when I first perceived she had a blue ensign flying.

Q. Did you ever take notice of that ship after day-break, to see whether she continued to go a-head ?

A. I think I have with great precision answered that question already.

President. Was the ship within hail when she passed you on the morning of the 28th ?

A. No.

Q. What distance ?

A. About half a mile.

Sir Chal. Ogle. Did you discover the flag with a glass, or your naked eye ?

A. With my naked eye, and no officer I believe on board my ship ever doubted it was the Formidable.

Sir Hugh Palliser. I am sorry to have troubled the Court and the Evidence with so many questions, but I thought it absolutely necessary, under the idea that
that

that Sir Charles Douglas must have mistaken some other ship for the Formidable.

[Sir Charles Douglas's cross-examination ended here, on his giving into Court the names of the two persons on board the Duke, who, he said, could likewise identify the Formidable in the same situation he had before described her.]

Captain JOHN LA FOREY of the Ocean called in, and sworn.

Q. What was the situation of the Blue division on the morning of the 27th relative to the Victory ?

A. I was along way a-stern of the Blue division, I could not judge ; I believe they might have been about three miles to leeward.

Q. Was the Ocean one of the ships that chased on that morning ?

A. No.

Q. How near was you to the Formidable, and what was your situation in respect to her ?

A. I was on the Formidable's lee-bow ; and I made no particular observations on the Vice-Admiral of the Blue.

Q. How long was it before the Ocean came out of action ?

A. I don't know.

Q. What situation was the Ocean in, when the Formidable came out of action, was she much disabled ?

A. Her sails and rigging were much cut, but very little damaged in her hull ; her masts were wounded.

Q. Did you take notice of the condition the Formidable was in

A. Her sails were very much torn and cut.

P

Q. What

Q. What time did the Ocean wear on the larboard tack, and was it by signal?

A. At half past two; I attempted to stay (which we failed in) to fetch in my station; I did not see the signal to wear.

Q. Did you see the Formidable on the larboard tack?

A. No.

Q. Did you observe the signal for the line on board the Victory, while on the larboard tack?

A. Yes.

Q. Did you see the signal for the line flying on board of the Victory while on the starboard tack?

A. I saw it while she was on both tacks.

Admiral Digby. How far was the Formidable from the Victory, when you passed the Victory, and was going upon the larboard tack?

A. I cannot recollect the distance; it was about half an hour after she crossed me.

Q. Did you see the signal for the line repeated by the repeating frigate?

A. I do not recollect I saw any.

Q. After you came out of action how long was it before you was able to take your station in the line?

A. About an hour.

Q. Did you see the signal repeated on board the Formidable?

A. No.

Q. Did the Formidable obey the signal for the line?

A. No, she did not bear down in the line.

Q. Did the Ocean bear down in consequence of the signal?

A. Not in consequence of the general signal, but as soon as her particular signal was thrown out she bore down.

Q. At what hour?

A. About

A. About seven o'clock.

Q. Did there appear any disability in the Formidable to prevent her bearing down in the line of battle?

A. There appeared no other but her fore-top-sail being unbent.

Q. What time of the afternoon did you get into your station in the Vice-Admiral of the Blue's division?

A. Between three and four o'clock.

Q. Did you keep your wind, or edge away?

A. I don't recollect.

Q. What sail did you carry, and how many knots did you go till seven o'clock?

A. I don't recollect how many knots we went; we had our three top-sails, and fore-sail set.

Captain Robinson. Were your top-sails reefed?

A. Fore-top-sail close reefed; the fore top-mast was shot half through, a little above the cap; I don't recollect whether the main and mizen-top-sails were close reefed.

Q. In what situation was the Formidable, and what sail did she carry?

A. I don't recollect what sail she did carry, neither do I recollect any thing more of her condition.

Q. What were the different bearings of the Ocean, relative to the Victory, and what was her position and what was your distance at seven o'clock?

A. I don't recollect, I did not see the Victory at that time; her distance might have been about three miles from us four points on our lee-bow.

Q. Was you a-stern of the Formidable, or how?

A. A very little a-stern and upon her lee-quarter withal.

Q. Did you see the Fox go from the Victory to the Vice-Admiral of the Blue?

A. I did not see her leave the Victory, or join the Formidable.

Q. Did you see any pennants thrown out on board the Vice-Admiral for particular ships of the Blue division to bear down, and at what time ?

A. Yes ; at seven o'clock.

Q. Did the Formidable repeat those pennants ?

A. No.

Q. What general signals were at that time flying on board the Victory ?

A. For the line of battle a-head, and the signal to bear down in the Admiral's wake.

Q. Were they repeated on board the Formidable ?

A. I saw the Blue flag at the mizen peak, the signal for bearing into the Admiral's wake ; but I don't remember seeing the signal for the line repeated.

Q. What was your station in the line of battle.

A. A-stern of the Formidable.

Q. When you left the Formidable's wake to go into the Victory's wake, what course did you steer, and what was your distance ?

A. I don't recollect what course, I steered right down to leeward ; I don't recollect the distance.

Q. At what time did you get into the Victory's wake ?

A. I do not recollect.

Q. Was the weather so as to admit of boats passing or repassing that afternoon ?

A. Yes.

Q. Was you ever within hail of the Formidable that afternoon ?

A. No.

Q. If the Vice-Admiral of the Blue had got in his station when you did, was there sufficient time to renew the action ?

A. There was time sufficient to have began it.

Q. Can

Q. Can you assign any reason why the action was not renewed that afternoon?

A. No.

Q. Was the sail the Victory carried such as to prevent the Vice-Admiral of the Blue from forming in the line, on that afternoon, from five o'clock till dark?

A. I think not; I speak only to appearances; I can be no judge as to the ability of the Vice-Admiral of the Blue.

Q. Was the sail the Victory carried such as you could easily keep your station?

A. Yes.

Q. Did you see the Formidable in her station in the line at any time of the evening of the 27th?

A. No.

Q. Did you see the distinguishing lights on board the Victory that night?

A. Yes, till ten o'clock.

Q. Did you see them on board the Formidable that night?

A. No.

Q. Did you see them on board the Queen that night?

A. No.

Q. What position was the Formidable in at day break on the morning of the 28th, in respect to the Ocean?

A. Upon the Ocean's weather bow.

Q. What was the position, and the Ocean's distance at that time, with respect to the Victory?

A. The Victory was upon the Ocean's lee bow; I can't say at what distance.

Q. Did you see the Vice-Admiral of the Red at that time?

A. No, I don't remember seeing him.

Q. Do you recollect what number of ships were nearest to you at that time?

A. I

A. I saw only the Vice-Admiral of the Blue.

Q. Did you see the Victory come out of action that afternoon?

A. No.

Cross-Examination.

Sir Hugh Palliser. What was the position of the headmost ship of the French fleet, when you got into your station in the line?

A. I placed myself in the line at that distance from the Victory which I thought would give room to the ships stationed a-head of me: there might at that time have passed one or two of the French line before my beam, a little without random shot of me.

President. If the Formidable had bore down when you did, could she have got into her station in the line?

A. I saw no other impediment than what I before have mentioned, of her fore topsail being unbent.

Sir Hugh Palliser. Did you take notice of the Formidable during the action, or make any observation upon her?

A. I made no observation during the action, but that of her having her mizen topsail a-back.

Q. What occurred to you upon that event?

A. It occurred to me it was kept a-back, in order to have more time to engage the French as they passed.

Q. You mean to say in order to pass the flower?

A. I do.

Q. When you came out of the action, and you was near the Formidable, did you take notice of her motions till after the firing ceased?

A. There was a great deal of smoke a-stern of me, occasioned by the ships firing; my attention was so much taken up in getting into my station again, and keeping clear of the ships that were a-head of me, that

I never

I never paid any more attention to the Formidable afterwards, or made any observation.

Q. As you was standing on the starboard tack, and meeting the Victory on the larboard, did you see the signal of the line on board the Victory till you passed her?

A. I saw it at the time that she crossed me to windward, very near me.

Q. When you bore down in the evening into the Victory's wake, did not you form a-stern of the Vengeance, and some other ships you found there?

A. I formed a-head of the Vengeance, and a-stern of two or three more ships which were close to the Victory in their stations.

Thursday, April 22.

The Hon. Capt. GEORGE BERKELEY, late Lieutenant of the Victory, now Captain of the Firebrand fire-ship, called in and sworn.

Q. Did you know any thing of the Fox being called to the Victory on the afternoon of the 27th of July, and at what time?

A. I did not know she was called to the Victory; I saw her afterwards, when she was standing to the Formidable, and I was told that she was gone with a message.

Q. At what hour was that?

A. It was very near five, past one bell the quartermaster told me.

Q. Did you observe her join the Formidable, and at what time?

A. I did not see her join the Formidable; I saw her very near about half an hour, after which time I staid upon deck.

President.

President. Was she upon the same tack with the Formidable at the time you speak of?

A. No, she had the Formidable open to windward.

Q. Did you see the Formidable before the close of the evening of the 27th, and what was her position in respect to the Victory at that time?

A. I saw her at different times towards the close of the evening; she was with her head the same way, or nearly right to windward of us, rather abaft our beam, about two miles and a half.

Q. What watch had you that night after the action?

A. I had the mid watch.

Q. What sail had the Victory out during the night of your watch, and at what rate did she go?

A. Treble reefed fore, and main top-sail, and fore-sail; I am not clear whether her mizen staysail was set, or not.

Q. Did she keep her wind?

A. She carried her helm a-lee almost the whole watch; she went at the rate of a knot and a half: I ordered the mate to put two knots.

Q. At the time you saw the Formidable on the evening of the 27th, how did the headmost ship of the enemy then bear with respect to the Victory?

A. When I looked last before the close of the day at the French fleet the fifth or sixth ship thereof I reckoned to be a-breast of the Victory; I cannot judge of the headmost.

Q. Did you see the Formidable at day break the morning of the 28th, and what was her position in respect to the Victory?

A. I did not see her; I was busy in making signals.

Admiral Digby. Did you see the Queen at daylight that morning?

A. No; I did not.

President

President. Did the Victory carry her lights during your watch ?

A. Yes, she did ; and an additional one at the bowsprit end.

Captain Duncan. Was the fleet in a tolerable line at day-break the 28th ?

A. As many of them as were formed appeared as well connected as they could be after a night.

Q. Are we to conclude from that, that any of them were irregular ?

A. There was some ships a-head upon our starboard bow, which seemed not to be in a line : who they were I cannot say.

President. What kind of weather was it during your watch ?

A. Much the same as we had before, thick at times and at times cleared up ; I could see the lights that were pointed out to me as the French lights.

Cross-Examination.

Sir Hugh Palliser. In what part of the Victory was you standing when you saw the Fox go towards the Formidable ?

A. After I had seen my quarters ready for action again, I came upon the quarter-deck, when one of the Lieutenants took me by the arm, and carried me to windward, saying, there is the Fox, gone with a trimming message to the Vice-Admiral of the Blue. I looked over the barricadoe, standing over the foremast gun of the quarter deck ; this conversation occasioned me to ask what it was o'clock ?

Q. Did you get on the gun to look over the barricadoe, in order to get sight of the Fox ?

A. Yes, Sir, there was no seeing without it, we were barricadoed so high.

Q

Q. Did

Q. Did the Fox keep to windward, or to leeward of the ships that were formed a-stern of the Victory?

A. I cannot say.

Q. How many ships were formed a-stern of the Victory at that time?

A. I cannot speak to my own knowledge.

Q. What was the station of the Arethusa, at that time, the repeating frigate?

A. I do not know; I did not see her at that time that I recollect.

Q. Did you never see her to windward of you that afternoon?

A. I recollect seeing her that afternoon, but the particular time when the Fox went to you, I cannot charge my memory with.

Q. When you did see her, was she on your weather beam in her station, about three miles to windward, or how?

A. Before the beam, I think.

Q. If the Formidable was, as you say, upon your beam, must she not have been near to the Arethusa?

A. I should think she could not have been very far off.

Capt. Berkeley being discharged from further attendance, withdrew.

Mr. JOHN MADGSON, Master of the Victory called in, and sworn.

Q. This is your log-book, containing the remarks on board the Victory to the 27th, and 28th of July, and is without any alterations, or additions since made?

A. Yes, except a noting of the time when the ship was wore at three o'clock of the afternoon of the 27th.

Q. What were the different times the Victory was wore on the afternoon of the 27th, after the action?

A. Half past one made signal, and wore to the leeward, tack from the starboard.

Q. Did

Q. Did you see the Formidable at that time ?

A. I saw a flag at that time through the smoke.

Q. At what distance was she then from you ?

A. About two miles, I believe, or a mile and a half.

Q. How was the Formidable's head at that time ?

A. Upon the starboard tack.

Q. Did you see her at all on the larboard tack after the action ?

A. No.

Court. Go on with the different times of the Victory's wearing that afternoon ?

A. She wore again at three o'clock to the starboard tack.

Q. Just before you wore to the starboard tack close upon the wind, did you see the Formidable, and if so, how at that time did she wear in respect to the Victory, and at what distance ?

A. The Victory was not close upon a wind after wearing.

Q. Describe how she steered ?

A. We steered about two points from the wind to join the ships in the S. S. E. I did not then see the Formidable.

Admiral Digby. Did you see the Formidable before she passed the Victory, before you wore the second time ?

A. I did.

Q. How long was that before you wore the second time ?

A. I do not recollect that time in particular, but I believe about two o'clock.

Q. What was her position at that time ?

A. She was then standing to the southward on the starboard tack.

Q. 2

Q. At

Q. At what time did the Victory haul her wind close upon the starboard tack?

A. About a quarter after seven.

Captain Peyton. Did not you haul your wind close before that time?

A. I believe not.

Q. Did not you alter your course and make it more weatherly about five o'clock?

A. The ship had very little way, she might have altered her course and fallen off.

Q. After the Victory wore to the southward, what sail did she carry, and how many knots did she go?

A. She edged away from the wind; she was under double reefed top-sails, and foresail, going two knots; for in wearing we bent a new main top-sail. I do not recollect any stay-sails we had set.

Q. Did you observe that you increased your distance from the Formidable, when you edged away to the southward?

A. I had not during that time seen the Formidable after wearing on the starboard tack.

Q. How soon after did you see her to take notice of her?

A. Between four and five o'clock.

Q. What was her position and distance in respect to the Victory at that time?

A. She was upon the Victory's starboard quarter, about three points, and near three miles distant.

Q. At what time did the Victory join those ships that she edged away for?

A. We drew near those ships in the south-east between five and six o'clock.

Q. Did the Victory after that continue edging away, or did she haul her wind?

A. I have said before, that we did not haul our wind till about a quarter after seven.

Capt,

Capt. Robinson. After you had hauled your wind at a quarter after seven, did you keep close to the wind all that evening?

A. We did.

Q. Was you upon deck at the close of the evening after the action?

A. I was.

Q. Did you then see the Formidable, and what was her position with respect to the Victory at that time?

A. Between seven and eight o'clock I looked at the Formidable, the distance was near the same as before, more towards the beam, five points upon the quarter.

Q. Was you on deck at day break the next morning?

A. I was upon deck about four o'clock.

Q. What sail was the Formidable under at the different times you saw her?

A. The first time I saw her was between five and six; when I saw her she was under main mizen top-sail and foresail; between seven and eight she bent her fore-top-sail and hauled one clew of the main-top-sail up; the fore-top-sail was sheeted home and not hoisted.

Q. Was the main-sail set?

A. It appeared to me to be setting, if not set, between seven and eight.

Q. Had she any stay-sail set?

A. I did not observe.

Q. At the two different periods you took notice of her, did it appear to you she was going from the wind, or close hauled?

A. She appeared to me close hauled.

Q. Was

Q. Was the Victory's log hove that evening, to your knowledge in the course of the 27th, after being on the starboard tack?

A. I don't recollect it was.

Q. Do you think the log-book was marked upon mere calculation of the officer of the watch, or by heaving the log regularly?

A. I cannot tell, I took it from the log-board.

Q. What sort of weather had you that evening?

A. Very squally and very uncertain; but it did not blow hard.

Q. Was you upon deck at break of day on the morning of the 28th?

A. I was on deck at four o'clock.

Q. Did you then see the Formidable?

A. I did not.

Sir Chal. Ogle. Did you look for her?

A. I did not, being busy in fishing the mast, and other duty on board the Victory.

Q. How did it appear to you the headmost of the French fleet bore in the evening of the 27th, in respect to the Victory?

A. The third ship from the van was a little abaft the Victory's beam, about two miles distance.

Q. Did the French fleet appear in line of battle at that time?

A. They were in line of battle.

Capt. Robinson. In what position did the British fleet appear to you at that period?

A. The ships of the van division were very near formed near eight o'clock, three ships a-stern of the Victory; part of the centre division were formed? the fourth was, as it appeared to me, to be about the sternmost of our ship's starboard quarter a point upon the quarter: a number of the rear division were

were then upon our starboard quarter, not in our wake.

Q. When you came upon deck in the morning of the 28th, what sail was the Victory under, and was she then to the wind?

A. Under treble reef top-fails close by the wind, and fore-sail, mizen top-sail setting; we always made it a point to have our mizen handed every night, that our lights might be seen.

Cross-examined.

Sir Hugh Palliser. You say you made an addition to the log-book at the time in noting the time of her wearing—when was the addition made to it?

A. Before I heard Mr. Keppel was to be tried.

Q. How long before that?

A. After I heard the trial was to come on; in conning my remarks over for the day, I found the omission was made in taking it from the board and slate.

Q. Are the courses, and rates of sailing regularly marked on the log-book?

A. They appear in my log-book as I took them from the board, and a slate that I kept for that purpose on the quarter-deck.

Q. Did the Victory lay too any part of the afternoon of the 27th?

A. I don't recollect she did; but I marked the courses as laying too, not being able to give a true account of her steerage.

Q. Does it appear by your log-book, that the Victory was lying too from one to five o'clock?

A. It does.

Q. Why could you not account for the courses and rates of sailing at those hours, as well as the preceding ones?

A. Because

A. Because we could not get our sails perfectly trimmed from the damage we had received in the action; we never had them all full at once, for some were shaking; she had very little head way.

Q. What was the situation of the ships of the center division a-head of the Victory at eight o'clock, the time you spoke of?

A. I did not take particular notice of what ships they were, there were some ships formed a-head of the Victory.

Q. Do you know that there were some of them out of their stations?

A. I don't of any particular ships; there were some not quite in their stations at that time, but I don't know their names.

Captain Colpoys. Who were the petty officers of watch on board the Victory, who marked the log-book that evening, between one and five, the period of laying too?

A. One of them is made a master; there was only one mate on board who marked the log.

Captain Colpoys. I am apt to think the log-book was lump'd, as is but too frequently the case, which is what I want to be satisfied about.

[It was granted by the master that the Victory's log books was lumped. The Court here ordered the log-books of the Prince George, Queen, Valiant and Berwick to be procured, and delivered in.]

Captain STONEY, late a Lieutenant of the Victory,
called in and sworn.

Q. Did you know any thing of the Fox being called to the Victory, and what time in the afternoon of the 27th?

A. Being

A. Being quartered on the lower-deck, I cannot speak positively as to time; I recollect the Fox being called.

Q. Did you see her go to the Formidable, and at what time?

A. I saw her wear while I was making a report to Capt. Faulkner on the quarter-deck, of some service I had been on below; she wore close under the Victory's lee-quarter; she hauled her tacks aboard, set her stay-sails and top-gallant sails close to the wind, but did not appear to me as if she could lay up and fetch the Formidable.

Sir Chal. Ogle. Could you observe that she weathered any of the ships that were a-stern of the Victory?

A. No, she did not weather any.

Q. What number were then in the Victory's wake?

A. To the best of my recollection three ships, the Foudroyant, Bienfaisant, and Prince George.

Q. Was the Victory close hauled upon a wind at that time?

A. I think she was at that time.

Q. Did you see the Formidable on the close of the evening of the 27th, and what was her position with respect to the Victory at that time?

A. She was so broad upon the Victory's weather-quarter, that I could not possibly see her from the Victory's weather stern-port—though I looked for that purpose frequently.

Q. What watch had you that night?

A. The first.

Q. What was the position of the Formidable the latest time you saw her that evening in respect to the Victory?

A. Two points abaft the weather beam.

Q. Can you speak as to distance?

R.

A. About

A. About three miles ; but distances are erroneous.

Q. What sail had the Victory out, and at what rate did she go during your watch ?

A. Fore-sail, treble reefed fore and main top-sail, mizen top-sail furled ; I think the mizen top-sail was set at about seven, but the mizen mast being fished and wounded, the mizen sheet was hauled aft, the ship not before steering for want of after-sail ; she went about two knots, or to two and a half, the most reported to me by the mate.

Captain Peyton. Did you regulate the marking of the log board in your watch, or at any time during your watch ?

A. Most undoubtedly.

Captain Peyton. Had you done so before in the course of the day during your watch ?

A. I always did so in my watch all that day ; from eight in the morning I was at my quarters.

Q. At the time you last saw the Formidable, how did the headmost ship of the enemy then bear with respect to the Victory ?

A. I don't imagine, when I last saw the Formidable, that I could see the enemy ; the last time I saw the enemy I should suppose the headmost ship of the enemy must be nearly a-breast the center of the van division ; but from their forming under our lee in the evening, about two miles to leeward of us.

Q. Did you see the Formidable in action, or soon after she came out ?

A. I saw her in the action.

Q. How long after the Victory came out of action was it that you first saw the Formidable ?

A. A very short time after.

President. Did you see the Formidable upon the larboard tack ?

A. Never after the action.

Not

Not Cross-Examined.

Capt. Stoney being discharged from further attendance, withdrew.

The Honourable THOMAS LIEUT. LUMLEY called in, and sworn.

Q. Was the Robuste at any time of the afternoon of the 27th of July within hail of the Formidable?

A. Not within my recollection.

Q. What time was the Robuste refitted after the action, and at what time did she take her station in the line that afternoon?

A. I cannot speak exactly of the time when she went into her station; it might have been about sun set, and she was not then perfectly refitted.

Q. How long was she going down into her station, and how much from the wind did she go?

A. I cannot charge my memory as to that.

Q. Before you bore away to get into your station, what distance was you from the Formidable?

A. I did not see her, I took no notice of her in the course of the whole afternoon.

Q. Did you see distinguishing lights on board the Formidable the night of the 27th?

A. I was only on deck an hour in the course of that afternoon, and I saw no lights on board that ship which the officer whom I relieved told me was the Formidable.

Q. Did it afterwards appear to you, that the ship pointed out to you was the Formidable?

A. I did not observe the first lieutenant who came upon deck at day-light went aft on the poop to look; I staid on the quarter deck; the ship pointed out to me was a-tern.

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Q. What

Q. What ship was at that time near you ?

A. The *Queen* was within hail on our larboard, upon our lee-bow.

Q. What distance was that ship from you which was pointed out to you as the *Formidable* ?

A. I cannot speak certainly ; I should suppose a quarter of a mile, or something more.

Q. What was the position of the *Robuste* with respect to the *Victory* at day-light ?

A. I cannot answer to that, as I remained on the quarter deck, and the *Robuste* being got into the van, I supposed the *Victory* to be a-stern.

Q. Did you see any distinguishing lights on board the *Victory* any part of the night ?

A. The one hour while I was upon deck, I took no notice of any ship but the Vice-Admiral of the Red, upon the lee bow, or to leeward, and the ship pointed out to me a-stern.

Q. Did you see any distinguishing lights on board the *Queen* that night ?

A. I saw distinguishing lights, but did not particularly notice how many.

Cross-Examined.

Sir Hugh Palliser. What hour was it when you was upon deck ?

A. From three to four o'clock.

Q. Was it ever possible for you to see any distinguishing lights on board the ship that was pointed out to you for the *Formidable*, which you said was in the situation you was then in, and could you have seen them if there had been any ?

A. Certainly not, supposing those distinguishing lights to be in the usual part of the ship.

Admiral Digby. Did not you take the *Queen* for the *Victory* ?

A. Certainly

A. Certainly not, Sir.—Mr. Lumley withdrew.

The Court was now cleared for more than an hour, in order to consider of the propriety, or impropriety of examining Capt. Bazely on the part of the prosecution; but on the re-admission of the audience, the Judge Advocate read the two following papers.

Sir Hugh Palliser.—As Capt. Bazely will be called as one of the principal witnesses in support of my defence, I submit to the Court whether they may not get at any information they may require in support of the prosecution, on their cross-examination of Capt. Bazely.

Judge Advocate. The answer from the Court.—The Court are of opinion that they cannot dispense with the examination of Capt. Bazely on the part of the prosecution.

Captain B A Z E L Y of the Formidable, called in, and sworn.

Q. Relate the situation of the blue division on the morning of the 27th of July, in respect to the Admiral?

A. On the Victory's lee-bow, and about a mile ahead.

Q. What were the proceedings of the Vice-Admiral of the Blue from that period, till the Formidable came into action, and when the firing ceased?

A. The fleet was standing on the larboard tack, till ten o'clock, when it tacked by a general signal. The Formidable first opened her fire upon the enemy at twelve o'clock about one or two ships a-head of the French center, and continued going along the line receiving the fire of the whole within pistol shot till she got to the rear, being in close action with them, as well

well as I can recollect about one hour and forty minutes.

Sir Chal. Ogle. How many ships were you engaged with?

A. I did not count them; I should suppose about fourteen sail.

Q. What was the behaviour of the Vice-Admiral of the Blue during the action?

A. Do you mean as a flag officer?—Very gallant, and spirited.

Q. What was the condition of the Formidable when she came out of action?

A. A perfect wreck, except that of her masts and yards coming over the side.

Q. What was her position with respect to the British ships when she came out of action?

A. After the Formidable had passed the enemy's rear, the first ship I observed was the Vice-Admiral of the Red, who was standing on the larboard tack to windward a mile a-head of us, and the Victory, with the ships near her, distant two miles right a-head of us.

Q. How soon did the Formidable wear after coming out of action?

A. Immediately; she wore to the larboard tack.

Q. What was the situation of the French fleet with respect to the Formidable when she came out of action?

A. They appeared to me to be disordered. Soon after we got round the French rear, three of their ships began to wear, and pointed to meet the Formidable.

Q. Did you see the signal on board the repeating frigate?

A. No, I did not.

Q. How

Q. How soon after did she wear on the larboard tack ?

A. About half an hour after.

Q. Did the Formidable and Victory meet and pass each other ?

A. They did.

Q. What appeared to you the reason for the Vice-Admiral of the Blue wearing back again to the larboard tack, and laying his head towards the enemy ?

A. To be ready to renew the action again when the Admiral should come up to him with the ships that were about him.

Q. What was the reason of her wearing on the starboard tack again ?

A. The signal for battle being hauled down, and the Vice-Admiral of the Red having shortened sail, the Vice-Admiral of the Blue thought it prudent so to do, to prevent disagreeable consequences, as the enemy's ships pointed towards us to cut us off.

Q. What time was the signal for the line hauled down on board the Victory ?

A. I did not see it hauled down on board the Victory, but I saw it hauled down on board the Vice-Admiral of the Red, who had repeated the signal : I can't speak as to the time, it was before we wore.

Q. What was the first time you saw the signal for the line, when it was flying, while on the starboard tack.

A. We were then meeting the Victory ?

Q. Was the signal repeated on board the Formidable ?

A. Yes, soon after the Victory wore.

Q. How soon did the Victory wear after passing the Formidable ?

A. Immediately.

Q. When

Q. When the Victory passed you on the starboard tack, was the signal for the line continued, flying on board her?

A. Yes.

Q. Did the Formidable obey it?

A. At the time you ask me the question, we were so little a way from the Victory, that the Formidable (I look upon it) was immediately in a line with her, after she had passed us; she appeared to go away two points from the wind, which put us in her wake, and no ship being between us.

Q. What sail was the Victory under when she passed you?

A. Top-fails, and fore-sail; her main top-sail was just bending when she passed us: whether they had a reef or no, I cannot recollect; the fore, and mizen top-sail were hoisted, and fore-sail set.

Q. Were the Victory's sails much shattered at that time?

A. I do not recollect immediately.

Q. What sail was the Formidable under?

A. Her fore-sail; mizen top-sail on the cap; her fore top-sail yard was on the cap, the sail of which was cut from the yard, and nothing but ribbands left of the canvas; her main top-sail hung by the flings, two reefs reached down, and her sails were all shot.

Friday, April 23.

Captain Bazely called into Court again.

Judge Advocate. Sir Hugh Palliser has received the letter which I have in my hand, from Sir Robert Harland, requesting his stay at Portsmouth might be dispensed with for a day or two, as he is under the necessity of going to town on very urgent business, but
that

that he had left his address with him ; and would return whenever he should receive a summons for that purpose.

The Court and Prisoner consented to the request.

Q. Did you make any efforts to obey the signal for getting into the line ?

A. Yes, we did.

Q. What were those efforts ?

A. Preparing to set the mainfail, and splicing the tacks and sheets that were shot away on both sides, and reeving new braces for the other yards that were all shot away, except one main brace, the only one left whole in the ship ; it was the first object, before we turned to knot the shrouds. and to get the mast properly secured before, to make more sail.

Q. Was the Victory going large, or by the wind at that time ?

A. She appeared to be going about two points from the wind ; at that time she was hauled most right a-head.

Q. Was the Formidable going large, or by the wind ?

A. Following the Admiral, keeping him rather to the lee of the bows.

Q. What time was your mainfail ready ?

A. In the course of fifteen or twenty minutes after we set to work to splice the tacks and sheets ; it was set under half an hour.

President. Was the signal for the line of battle on board the Formidable flying at that time ?

A. Yes, it was, as soon as the Admiral passed upon our lee.

Q. After your mainfail was set, was every other effort made use of, by which the Formidable could keep her station in the line ?

S

A. Yes,

A. Yes, every other effort was made use of; the officers and ship's company were employed to get the ship refitted till ten o'clock at night.

Q. Do you suppose that Sir Hugh Palliser imagined he was in the line all the afternoon?

A. Not all the afternoon by any means. Upon the Vice Admiral of the Red coming down, we sheered out of his way to give him an opportunity to form in the rear, which threw us about a mile a-weather in the Victory's wake; and after the Vice-Admiral of the Red quitted that station, we were left about a mile and a half or two miles distant from the Victory, which was further a-stern than our proper distance in the line.

Q. Did the Victory carry so much sail as to prevent the Formidable keeping her station?

A. Yes; she encreased her distance from the first moment she passed us, till dark at night.

Q. Did the Victory always outfail the Formidable with the same sail?

A. Yes, at all times, and in all situations.

Admiral Digby. At what time do you think Sir Hugh Palliser was first acquainted with his being out of his station that afternoon in the line?

A. Immediately that it happened, for he was upon deck, and gave orders himself for the ship's sheering to windward; but I cannot ascertain the distance.

Q. How near was the Queen to the Formidable at that time?

A. I cannot recollect precisely.

Q. At what time did the Red division quit that station in the rear, and pass a-head of the centre?

A. I don't know the time, but I perceived the manœuvre.

Q. Was the signal for the line, or any other general signals flying at that time on board the Victory?

A. I

A. I think the signal for the line of battle was flying, and so it was on board the Formidable.

Q. Did Sir Hugh Palliser order the signal for the line of battle to be hauled down any time that afternoon, on board the Formidable?

A. Never to my knowledge.

Q. Did you receive any orders from Sir Hugh Palliser, in consequence of your being out of your station, and what were they?

A. My orders in general from Sir Hugh Palliser, that evening, were, to attend with the rest of the officers, stationed in different parts of the ship, to refit the ship with all possible dispatch.

Q. After you had hauled up, did you bear away again, and how soon?

A. Immediately after the Vice-Admiral of the Red and his division were formed a-stern of the Victory; we kept the Victory open to the Formidable's lee gang way, in the wake of the Formidable's shrouds, going a point, or a point and a half to leeward; we could not steer to a point with the little head-sail we had.

Q. Was the situation you were in, in the Formidable, such as the Victory might see any general signal flying on board the Formidable at that time?

A. I should think not those that were flying at the mizen peak.

Q. Did you see the signal on board the Victory, for ships to bear down into the Admiral's wake?

A. I did about seven o'clock as well as I can remember, with the particular ships pennants of the Vice-Admiral of the Blue's division, which were immediately observed and repeated on board the Formidable.

Q. Was the general signal to bear down, made before the pennants on board the Victory?

A. I cannot charge my memory ; I do not remember I did see it.

Q. Was any person appointed to observe, and minute the time the signals were made on board the *Formidable* ?

A. Yes ; two midshipmen were appointed to take minutes of signals, but whether they did or no, I cannot say.

Q. When you repeated the signal to bear down, was the Blue flag hoisted under the signal for the line or the signal for the line hauled down ?

A. To the best of my memory it was hoisted under the signal for the line, and continued so till dark.

Q. Did the Vice-Admiral of the Blue bear down in consequence of that signal ?

A. No ; he kept the Admiral open in the position I have already described, endeavouring to recover the length of his station ; at least that was the reason the Admiral assigned to me.

Q. Was the *Formidable*, at the time you speak of, in a condition to go down, and take her station in the line with respect to her sails and rigging ?

A. No, by no means, either to recover her station, or keep her distance between two ships in the line.

Captain Robinson. What sail was the *Formidable* then under ?

A. Under the sail I have already described ; and we were then preparing to bend her fore topsail, as the fore-mast at that time was not properly secured to venture to bend a sail to the fore topsail yard, or to carry sail on the foremast.

Q. Had the *Formidable* made no alteration of sail from the time you first described her sail, till about seven o'clock ?

A. No, we had no other sail to set ; the jib, and all the stay-sails, and all her sails, and halliards before being all shot away.

Q. Had

Q. Had there not been time in the course of three hours and a half, to have brought on more sail ?

A. No, not in the condition the masts and rigging were in after she had come out of action, to have ventured to have carried sail on either of the masts, till the shrouds and rigging were properly secured.

Q. Don't you think a ship going two knots and upwards may be able to keep her station in the line, or between two ships ?

A. No, by no means, when the Admiral went faster than the Formidable, which was certainly the case the whole of that afternoon if the Formidable's log-book is marked right ; but I neither hove the log myself, nor know who hove it.

Q. How was the wind in the course of that afternoon till dark ?

A. Fresh and squally, till dark, at times ; and cloudy towards the close of the evening.

Q. Did the Fox come to the Formidable from the Admiral that evening, and at what time ?

A. Yes, the Fox came and cheered the Formidable to the best that I can charge my memory, rather before sun set, between the time the pennants were thrown out and sun set ; but I did not see the Fox, till I heard her cheering.

Q. What time did the sun set then ?

A. Between seven and eight o'clock, at that time in the latitude of Ushant.

Q. Did the Fox bring any message to the Formidable, and what was it ?

A. None that I heard, as my situation would not permit me, had I even seen her before she cheered.

Q. In what part of the ship was you at that time ?

A. On the fore part of the fore-castle, quite forwards.

Q. How long had you been there ?

A. I

A. I quitted the quarter deck immediately after the pennants for the particular ships of the Vice-Admiral of the Blue's division were thrown out ; I then went forward on the fore-castle to give directions about the fore-mast being secured, and as soon as I had done that, I heard the cheer from the Fox.

Q. Do you know whether any message was returned from the Formidable to the Victory ?

A. I neither heard any message that was received, nor answer that was given between the two ships.

Admiral Digby. Did no body ever inform you that the Fox was making towards the Formidable ?

A. No.

Q. How did the Formidable steer respecting the Victory after the Fox had joined the Formidable ?

A. Just keeping her open under her lee as before described.

Q. Did the Vice-Admiral of the Blue express any uneasiness at not being able to get into his station ?

A. Frequently, and with very great anxiety.

Q. You have said the Formidable was a perfect wreck at that time—in what condition were her boats ?

A. We had only three boats left at that time, having lost three, one of which was shot through, and the barge ; one of the three left, had several large shot holes in her.

Q. Was the weather such as boats could pass from ship to ship during the evening ?

A. Yes ; I think a boat might pass.

Captain Robinton. Were your ship's yard tackles in such a condition as to admit your hoisting any boats out at any time that afternoon, and were the yards secure ?

A. No :

A. No : we could not hoist a boat out till the next morning, without bringing the ship too.

Q. Did the Vice-Admiral of the Blue at any time propose to you endeavouring to get a boat out, or did he mention to you that he wished to shift his flag on board any other ship.

A. No, by no means—nor did he express any such wish to me to shift his flag.

Q. How many ships from the Victory was the Formidable's station a-stern ?

A. The ninth, eight being between her and the Victory.

Q. What was the nearest ship a-stern of the Formidable, when the pennants for the particular ships of the Blue division were thrown out ?

A. I do not recollect making any observation of any one ship, or ships a-stern at that time.

Q. Did not the Ocean quit the Formidable, and bear down.

A. I don't recollect that circumstance.

Q. Were there any ships near to the Formidable at that time ?

A. There were two to windward, as well as I can recollect, the Egremont and America. I recollect no others.

Q. In consequence of the signal for particular ships to bear down, did any ship of the Blue division go down into the Admiral's wake ?

A. I was engaged forwards in getting the fore top-sail set ; therefore I did not observe.

Q. When was the fore top-sail set ?

A. We had it set soon after the Fox cheered us, between that and dark.

Sir Chal. Ogle. Did you then bear away for the Admiral's wake at any time before dark ?

A. No ;

A. No ; we did not : we were then about a mile a-weather of the Admiral's wake, and two miles a-stern of the center. We steered to get into our station, which was to keep the Admiral on our lee-bow, which, if I may be allowed to have any judgment, was the properest course that she could be in.

Q. Do you think it was possible for the Formidable to get into her station by seven o'clock ?

A. I think not.

Q. Do you think the Ocean could always outfail the Formidable ?

A. I think she always could.

Q. What was the position of the Red division at that time in respect to the Formidable ?

A. They appeared to me to be either formed, or forming.

Q. Was the center division formed at that time in line of battle ?

A. I don't think all the division was formed.

Q. How many ships of the Vice-Admiral of the Blue's division were in their station at that time ?

A. I do not know.

Q. Do you recollect the Red division passing from the rear to their station in the van ?

A. Yes ; I do.

Q. At the time when the Red division was moving from the rear to get into their station a-head, how was the Queen situated with respect to the Formidable.

A. She was just before her lee-beam.

Q. Was the French fleet formed in a line at seven o'clock.

A. They appeared so to me, the whole of them.

Q. What was the position of the headmost ship of the enemy, in respect to the Formidable.

A. The

A. The leading ship of the van was before our beam, between us and the Victory, to leeward; I judged them to be between two and three miles ahead.

Q. Do you know how many points they might be open from the Victory's stern?

A. No; I cannot judge; just at dark the headmost ship appeared to me about a-breast with the Victory.

Q. What became of the Formidable after dark?

A. She was keeping the same course after the Admiral till half after two o'clock in the morning; then she bore up, and took her station in the line, a-stern of the Victory, before the day was fairly open.

Q. Were the courses you steered that evening and night particularly directed by the Vice-Admiral, or were his directions given in general to get into his station?

A. By the Admiral's own directions to me; the same directions were left to the different officers who had charge on the deck; but I never was off the deck fifteen minutes at any time, and that merely to refresh myself.

Q. What were those directions?

A. To keep the Admiral's lights just open to our lee-bow, and should we near the lights to acquaint him.

Captain Robinson. Was you ever a-head of the Victory, or abreast of the van division that night?

A. No, we never before were a-head of the Victory, nor ever abreast off the van, after the Victory passed us under our lee; after the signal for the line was flying, we were next ship from the Ocean; one of the enemy's ships appeared to be not more than a mile from the Formidable's lee quarter, that I am certain of.

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Q. Were

Q. Were the Victory's lights discernable the whole night?

A. Yes; I am clear of that; I saw the three lights, and the top lights myself.

Q. Did the Formidable carry her distinguishing lights that night?

A. Upon my evidence on a former occasion I observed that I thought she did not carry her distinguishing lights at top, as her lanthorn was wounded; but conversing since with those whose business it was to attend to them, I find they were out at the top; but to this there are officers, and people of the ship, who can speak particularly; as to the stern lights, on my oath, I can answer that they were burning.

Admiral Digby. Were any orders given by the Vice-Admiral relative to the lights?

A. He observed to me the difficulty of keeping in a light, but he said it was not however material, particularly as it might prevent the two ships that were a-weather of us before dark from getting into the line.

Q. What was the difficulty of keeping in the top lights?

A. I mean the candles would not burn on account of the wind through the shot holes, notwithstanding the canvass, or pieces of hammock that were put round to cover the shot holes.

Q. Did you give any direction to the officer of the watch, in consequence of that conversation?

A. I don't recollect any particular direction, or who was the officer of the watch that was present, or whether there were one or two present.

Q. When the Formidable was ready to get in her station, how much did she alter her course?

A. She went much on her wind, rather on the star-board quarter, being at that time shot well up in the Admiral's wake.

Q. How

Q. How was the *Formidable* manned at that time?

A. She was far from being a bad manned ship.

Q. How did the men behave after and during the action, that afternoon?

A. Soberly, orderly, and very attentive to their duty.

Q. Was there not a frigate ordered by the Admiral to attend the Blue division?

A. There was a frigate stationed to the Blue division, which was the *Milford*, but she did not come particularly to us that afternoon after the battle.

Q. Did the Vice-Admiral of the Blue ever call the frigate to her by signal, or otherwise, that afternoon?

A. No; not that afternoon that I ever remember.

Q. Was the *Formidable* at any time of the afternoon of the 27th of July, after the action, in such a condition as not to be manageable?

A. She was manageable to wear, and manageable to steer, but not manageable so as to get up into her station in the line, or to preserve her distance between two ships in the line.

Q. Was the *Ocean*, or any other ship, in such a situation in the evening, that the Vice-Admiral might have shifted his flag on board her with convenience?

A. I don't recollect any particular situation that the *Ocean*, or any other ship was in, near us on that evening, to which it could have been shifted with convenience.

Q. Did it occur to you at that time, that it would have been a right measure from the situation of the ships and the fleet?

A. It did not occur to me to be a right measure situated as the fleet then was.

Sir Chal. Ogle. Give the Court your reasons why you thought so?

A. Because I did not think that the Admiral meant to renew the battle that evening; from the different manœuvres that I saw I thought so at that time, and I am still of the same opinion from the circumstances I can recollect, and from the situation of the fleet at the same time.

Capt. Duncan. Was not the signal for the line flying the whole afternoon?

A. I think it was, to the best of my recollection.

Q. Was the signal for the line flying on board the Formidable all that afternoon?

A. It was, to the best of my recollection.

Q. When the center of the van division were in the line, or near it, and the Formidable was steering after, and keeping the Victory a little on the lee-bow, did you observe what was the position of the Queen at that time respecting the Victory?

A. I don't know exactly; I did not set her; she appeared to me to be a-head of her at the time.

Q. How far open was the Queen with the Victory, or was she in a direction sheet in one with the Victory, in respect to the Formidable?

A. I saw her open to the Victory, rather upon her bow, I think, but how much I cannot recollect.

Capt. Robinson. You say you repeated the Admiral's signal for the line, did you fire a gun at this time?

A. I don't recollect.

Q. Did you receive the orders from Sir Hugh Palliser to repeat it?

A. I was forward when it was done, but I saw it flying at different times, and I do not think it was hauled down before dark.

Q. Were

Q. Were the Formidable's colours hauled down all night?

A. I don't think they were.

Sir Chal. Ogle. Did you on the morning of the 28th at day-break take any notice of the situation of the Stirling Castle or Queen?

A. I don't recollect taking any notice of the Stirling Castle, but after day-light the fleet wore, and I observed the Queen upon the starboard quarter of the Victory; the Queen was upon the right wing, and we upon the left of the fleet brought too.

President. Was the Victory ever within hail of the Formidable in the course of the afternoon of the 27th?

A. I do not recollect that we were within hail of the Victory.

Q. Do you suppose, that from the Victory they could have seen the state and condition of the Formidable at that time?

A. I think they might, or any ship within a mile's distance might see it.

Q. Did you perceive, that after the Victory went away large, having wore to the southward, did she keep her wind any part of that afternoon?

A. I did not till late in the evening.

Q. Did you take notice what sail the Victory carried before dark, from four till seven o'clock?

A. Three topsails and forefail; I can't say whether they were reefed or not; I believe there might be a mizen stayfail, or mizen out, but I can't recollect particularly; I think her topsails were reefed towards the close of the evening.

[His examination being closed here]

Sir Hugh Palliser. I don't propose to examine Captain Bazely, till I may have occasion to call him upon my defence.

WILLIAM

Mr. WILLIAM FORFAR, Master of the Formidable, called in.

Q. As you have delivered in two log-books to the Court, are either of these your hand-writing?

A. No: neither of them are mine, my own is gone to London.

[He was here sworn.]

Q. Is this a true copy of the original log-book, containing the occurrences of the 27th and 28th of July, without alterations or additions?

A. Yes; since they were written.

Q. How soon did the Formidable wear, after coming out of action on the 27th of July?

A. Almost immediately.

Q. How long did she continue upon the larboard tack?

A. Not long, but a very little while.

Q. What time did she wear again to stand to the southward?

A. About two o'clock, as near as I can guess.

Q. Did you about that time pass the Victory, and how near?

A. We passed her soon after, but not within hail.

Q. What was the condition of the Formidable upon her coming out of action respecting her sails and rigging?

A. She was an entire wreck as to them.

Admiral Digby. How long after you had passed the Victory, was it that the Victory wore to the starboard tack?

A. The Victory wore under our stern almost as soon as she passed us.

Q. Was she within hail?

A. I don't think she was.

Q. What

Q. What signals were flying on board the Victory at that time?

A. I cannot tell.

Q. What signals were flying on board the Formidable at that time?

A. I can't particularly tell, I was so employed on the repairs of the ship.

Q. Do you remember the Fox coming to the Formidable?

A. Yes.

Q. At what time?

A. A little before sun-set.

Q. Do you remember the Fox hailing the Formidable?

A. Yes, I do.

Q. What message was delivered?

A. I cannot say, I did not hear it.

Q. Did you hear any answer delivered to that message?

A. I did not hear any, I was on the fore part of the deck when they hailed the Formidable; I did not hear any thing one way or the other.

Q. What was the situation of the Ocean in respect to the Formidable from five o'clock till she bore away into the Admiral's wake?

A. She was upon our lee-quarter, I cannot say the distance.

Q. Do you know the time she wore away?

A. I do not.

Q. Was it before or soon after the Fox hailed the Formidable?

A. Before, to the best of my recollection.

Q. How many points did she appear to go more from the wind than the Formidable was steering at that time?

A. It

A. It is impossible for me to say, perhaps two or three points.

Q. What sail had the Formidable then set?

A. We had our main top-sail on the cap, our mainsail was very much cut, and I believe the mizen top-sail was on the cap; that was all the sail we had set: the fore tack was on board, but the sail was all to pieces.

Q. Was the condition of the Formidable such, that she could have bore away at that time?

A. Yes; we certainly could have kept her right before the wind.

Q. What was the position of the Victory at that time respecting the Formidable?

A. About a point under her lee-bow, and she was ordered to be kept so, and we endeavoured to keep her so as near as we could.

Q. Did you receive any orders from Sir Hugh Palliser relative to the steering of the ship?

A. Yes.

Q. What were they, and when did you receive them?

A. To keep the Victory about a point under our lee-bow, to steer after her. The orders were given, I think, at five or six o'clock, when the Red division went a-head of the center.

Q. Was that a proper course to lead you in your station?

A. Yes, I think the most proper, as the Admiral was steering away, and we following, and he increasing his distance from us at that time.

Q. Was your ship then in condition to go into the line, and was she capable of keeping her station in the line if she could have got into it?

A. No, by no means; it was impossible.

Q. Did

Q. Did you observe the position of the Queen just before the Red division went from the rear to the van, to take their station, and what distance?

A. A little before our beam; her distance I cannot speak to; it might be a mile, or a mile and a half.

Q. Did you see the signal for the line, at any time that evening, flying on board the Formidable?

A. I was so much employed, that I paid no attention, nor did I take notice of any signals.

Q. Did you see the signal flag at the mizen peak for ships to bear down?

A. I saw flags at the mizen peak, but cannot say what they were for.

Q. What time did the Formidable get into her station in the line, in the morning of the 28th?

A. At break of day.

Q. At what time was the Formidable in a condition to get in her station in the line?

A. Not before dark.

Admiral Darby. What was the reason that you was so long before you bent the fore-top-sail?

A. The fore-rigging being all cut, and the mast wounded, and being found rotten in the heart, we were afraid to trust men in the shrouds, till the mast was secured.

Q. Was you upon deck, at day-light on the 28th?

A. Yes.

Q. What was the position of the Formidable, with respect to the other two flag ships, on the 28th at day break?

A. The Victory was right a-head, her top and poop lights were in one, as I was directed to bring them so; the Queen was upon the Victory's starboard bow, six or seven miles from us.

U

Q. Did

Q. Did the Formidable carry distinguishing lights that night ?

A. Her main top light was light ; I cannot speak as to her stern lights.

Q. Were any orders given about taking the light in ?

A. I remember some of the men saying the lights would not burn, as the lantern was broke.

Saturday, April 24.

At the meeting of the Court this morning at ten o'clock, Sir Hugh Palliser was informed by the President, that the evidence in support of the prosecution being closed, the Court wished to know when he meant to enter on his defence ?

Sir Hugh Palliser. I should be extremely sorry to defer it a single moment longer than I deem absolutely necessary to arrange the several parts of it ; but as that must take up some time from the length of the evidence already adduced, I must, therefore, request the indulgence of the Court until Tuesday next, before I enter on my defence.

The Court was here cleared, in order to take this matter into consideration ; on the re-admission of the audience, the President informed the Prisoner that the Court wished, if he could make it convenient, that he would enter on his defence on Monday morning, but unwilling to press him, with respect to time, they would, on the meeting of the Court on Monday at eleven o'clock, (which was unavoidable) allow him till the next day, if Sir Hugh then deemed it necessary.

Sir Hugh Palliser. I feel myself much obliged by this indulgence of the Court, and will not take up an unnecessary moment of their time. I have further to beg

beg permission to have recourse to the log-books of the Queen and Valiant, as the previous inspection of those may be of great service to me on my defence.

The Court was again cleared for a few minutes, when they assented also to this request, further ordering the Berwick's log-book to be procured. After which they adjourned to Monday morning eleven o'clock.

Monday, April 26.

The Court met at eleven, pursuant to the adjournment of Saturday, and were further adjourned to Tuesday, Sir Hugh Palliser not being ready to begin his defence.

Tuesday, April 27.

The Court met again, and Sir Hugh Palliser, in an address to the President and rest of the members, stating the difficulties he laboured under in preparing his defence, and requesting a further indulgence, the Court adjourned till the next morning.

Wednesday, April 28.

As soon as the Court was assembled this morning at eleven o'clock, Sir Hugh Palliser addressed himself to the President, and the rest of the members, desiring, as his voice would perhaps, be too low to deliver the whole of his defence in so articulate a manner as might be necessary for the information of the Court, that the Judge Advocate might be permitted to read it in his stead, which being immediately complied with, that gentleman read as follows.

T H E
D E F E N C E
O F
ADMIRAL PALLISER.

I N T R O D U C T I O N.

Mr. President and Gentlemen of the Court,

BEFORE I enter into the formal vindication of my conduct, I entreat the indulgence of the court whilst I speak a few words concerning the peculiar circumstances under which I appeared before them. There is some consolation in lamenting my misfortunes in the presence of persons of generous minds; men, whose honourable feelings will not deny the tribute of commiseration to the unfortunate.

I may truly call myself unfortunate in the severest sense of the word: for all those sufferings which now afflict me, have been brought on by the pursuit of a candid and fair hearing to defend my character against the unprovoked attacks of the most inveterate and unrelenting enemies.

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Four and forty years I have now had the honour to serve my king and country in the navy; during which long time I have not been without my share of the hardships, the dangers, and distressful incidents so common to men of our profession. From the commencement of this long service, it has ever been my first ambition to deserve the favourable opinion of my countrymen by the most industrious exertion of my faculties in every way proper for a naval officer; having neglected no opportunity of meeting the public enemy, or of performing any other duty to which I was competent.

It has been my good fortune to have had my labours in the service rewarded by my sovereign with honourable and profitable offices; and also till the occasion of the present trial, uniformly to meet with the approbations of my superiors in command. But I have ever valued my honour and character as an officer and a man at a higher rate than the emoluments of the most beneficial employments, and it has ever been my principle to be ready to sacrifice the latter, rather than tamely submit to the assassination of the former.

When it was thought expedient to arm our fleets against France, though already possessed of offices which supplied an ample income, and though for thirty years of my life afflicted with a painful bodily infirmity, from an accident in the course of the service, and therefore more exposed to danger from the fatigues of a sea command; yet warmed by a zeal to serve my country once more in the walk of my profession, I was happy to be honoured with the third post in the fleet under the command of Admiral Keppel.

An engagement soon ensued, and for my share in it the Admiral publicly, and repeatedly, testified his approbation of my conduct. But the action not being followed with that splendid and compleat victory our country-

countrymen expected, some of the friends and dependents of the Admiral thought fit to cast injurious reflections both on me and my division, though much the greatest share of the engagement had fallen to our lot; and it was endeavoured, by letters in the public prints, and otherwise, to impress the world with an idea that my misconduct, more particularly, was the cause of not having come to a second, and more decisive engagement.

I appealed to my commander in chief for justice to my character, but I found him averse to giving the proper check and contradiction to the reports, by which my honour was wounded; and notwithstanding his having at first publicly approved of my conduct, I had too good grounds to suspect that privately he did not discourage a very opposite representation of me.

Inflamed with resentment by the attacks on my character as an officer, and by refusal of the Commander in Chief either to accuse, or to exculpate me, I pursued measures with a view chiefly to my own justification, which have brought upon me the rage of so violent a party; and the most unexampled irregularities have been practised to effect my ruin and destruction, as well as through the pretence of my name to disturb the public tranquillity.

To check these proceedings, I anticipated the wishes of my enemies, by making an immediate surrender of several valuable offices to the amount of between two and three thousands a year, leaving myself with no other mark of distinction than my military rank, which I retained with a view only of having the benefit of a trial.

But my enemies prescribe no bounds to their rage and malice. Before my trial was ordered, every species of threat was applied to deter me from appealing
to

to a Court-Martial for clearing my honour; and since it has been known, every art which the industry of an host of powerful enemies can supply, has been practised to disappoint me of a fair hearing. All accuse secretly; but not one of the whole list chuses to come forth in a manly way to avow his accusation. By this ungenerous manner of proceeding, I am exposed to the most extraordinary disadvantages. My real accusers become witnesses. No specific charge is made, in consequence of which I scarce knew how to shape my defence. Every witness claims the right of attacking me as an accuser; so that, since the first day of the trial, new accusations have been daily springing up.—If the accusation fails of success, blame belongs to nobody. If it succeeds, each will claim a share in the merit of making it. But even all this is not enough to gratify their resentment; since my trial has been ordered, they have attempted to deter me from it, by conspiring to address his Majesty to degrade me from my rank; and I have too much reason to believe that two of the Admirals, and most of the Captains examined against me, have been so regardless of even the semblance of decency as to sign it; though even when they knew that they were to be called upon as witnesses. Nay, since the trial has been going on, daily attempts have been made in the public papers to alarm my judges, as if themselves would not be safe from attack in doing me justice.

With all this weight of party, and prejudice co-operating against me, my enemies may have flattered themselves with the hopes of disarming me of the fortitude requisite to sustain me in so oppressive, and trying a situation: but feeling a consciousness of my innocence, and encouraged by confidence in your firm impartiality, unequal and severe as the conflict is

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is, I look to the issue of it without dread or apprehension.

D E F E N C E.

The general subject of the present trial is my conduct as Commander in the third post of the British fleet under Admiral Keppel, on the 27th and 28th of July last; more especially my conduct subsequent to the action, with the French fleet, on the former of those days.

The first thing insinuated against me is, that at five in the morning of the 27th, my ship was considerably to leeward of her proper station. I collect this charge from the manner in which Admiral Keppel, on his trial, explained the object of the signal for six or seven of the ships of my division to chace to windward; for as he represents, this signal was to close the interval between the Victory and me, occasioned by my being far to leeward; and Admiral Campbell, who now appears to have made this signal, so important in its consequences, without previously consulting the Commander in Chief, justifies it under the same idea.

Whether the gentlemen mean absolutely to impute any fault to me in this respect is not quite clear from their words: but as they may bear such a construction, it is not fit that I should suffer them to pass unnoticed.

My answer is, that at the time stated, the Formidable was upon the Victory's lee-bow, and that this was the position in which the Admiral's last signal for the fleet's tacking altogether, which was in the morning of the preceding day, had placed me; and that he suffered me to continue in it without making any signal to alter my position, which implies that
he

he did not disapprove of it. As to the evidence of Admiral Campbell on this head, he placing me before the Victory's beam, it will be found contradicted, not only by my officers, but by Admiral Keppel's own journal, which describes me on the 27th to have been on his lee-bow at day-light. The words of the journal are, " At day-light saw the French fleet to windward, the Vice-Admiral of the Red and his division on the weather-beam, the Vice of the Blue on the lee-bow."

Therefore it seems most probable, that Mr. Campbell, perhaps not a little solicitous to justify his own signal, I will not say influenced by a desire to strain every thing into a crimination of me, is inaccurate in the recollection of my position. But be this as it may; and though it should be admitted, that Rear Admiral Campbell is right in supposing me to have got more to leeward in the morning of the 27th than I was the night before, yet I trust that will be no cause of censure of me; unless it shall appear, which I think impossible, that my being too far to leeward was owing to some negligence, or inattention, on my part: sure I am, that I was ever studious to keep my ship, where I thought the Admiral's motions required her to be; nor have I the least reason to suppose that my officers were wanting in exertions to second my endeavours, and obey my orders for this purpose.

As to my conduct in the engagement itself, it was so unexceptionable, that the most bitter of my enemies do not complain of it; consequently to enter into a very formal justification of this part of my conduct, would be giving unnecessary trouble. However, I doubt not, but that the Court will be attentive to the share I had in the engagement; as well, because the proper discharge of my duty, whilst the

action lasted, may entitle me to strong presumptions in my favour, as because it will account for the extraordinary damages to my ship, which materially relate to the defence of my subsequent conduct.

With a view to this I beg to be indulged with a few words relative to the time of action itself.

I went into action under very singular disadvantages; for whatever might be the intention of the signal for most of the ships of my division to chase to windward, the effect produced, was separating so many of my division from me, and from each other, that, during the time of action, I had not one ship near enough to support me. Both the other flag-officers were supported in the action by all the ships in their respective divisions; and the Admiral's own division was further aided by the junction of several ships of mine. But the signal for chasing left me with only two ships in any degree near me, and these, by the chasm from the want of my other ships, were at too great a distance to take off any part of the enemy's fire; the nearest ship a-head of me being half a mile from me, and the nearest a stern, a mile, except for a few minutes at the latter end of the action, when one of the ships a-stern of me shot close up to leeward of me. Before I began firing on the enemy, I tacked my mizen-top-sail, and it was kept so the whole time I was passing the French line; which, by retarding my progress, enabled me to give the French more of my fire, and consequently was the cause of my receiving more from them. The first ship I became close engaged with was the first or second ship a-head of the French Admiral, after which I successively passed the remainder of the French centre, and the whole of their rear; and that no ships might escape my fire, I hauled my wind, to close with the two sternmost ships of the enemy, which

which appeared to have kept more to windward than the other ships I passed, and not to have been engaged before. On the whole, I believe that the Formidable fought seven or eight ships more than fell to the share of Admiral Keppel, whose log took notice of engaging only six ships of the enemy's, besides the French Admiral; and is therein confirmed by the evidence of Mr. Moore at the late trial, he speaking only to seven or eight ships.

These particulars of my conduct in the engagement I should be above relating, if it was not necessary to account for the extraordinary damages to my ship; and if some of the witnesses against me, when they were examined to this point, had not spoken of me in such cold and indifferent language as strongly marked their anxiety to prevent any favourable impressions of me on the minds of the Court; lest my proper behaviour in the critical moment of action, should induce a favourable construction of my subsequent conduct. It is very true, as Admiral Keppel expresses it, that I only performed my duty like other officers. But the question, which came from the Court, did not lead to so invidious and offensive a comparison as the answer points at; nor can I imagine, why it was answered in that way, except from ill will towards me. If any comparison was proper, it should have been, not of the conduct of one officer with another, but of the share which they respectively had in the action, from the different situation of their ships. It might be, and so the fact was, that it was my fortune, and that of the ships of my division to have more of the action, than the ships of the two other divisions, yet it would be a great injustice to suppose, that the Captains of the other divisions, if they had been engaged on the same terms, would not have acquitted themselves with equal zeal.

On coming out of the action, the first moment I was clear of the smoke, I anxiously looked for the Admiral,

being ever solicitous to second what appeared to me to be his design. At this time he had wore, and I saw him at some distance, with the ships of his own division about him, and some of mine, which had joined him in the beginning of the engagement. He was standing towards the enemy, and had the signal for battle still flying. The Red division was then to windward of the enemy. Hence I took for granted, that the Admiral intended to renew the engagement immediately; and rejoicing at the idea, I did not one moment hesitate to endeavour taking the lead in what then appeared to me so glorious a design; therefore though my ship was the last, or last but one, which came out of action, and had apparently suffered very much in her sails and rigging, and in loss of men, yet I instantly ordered the ship to be wore, and to stand towards the enemy, who was still within gun shot of us, without waiting to examine into the state of our damages. I also directed the officers and men to return to their quarters. My orders were executed instantly, and by the use of temporary ropes to brace the yards about, the ship was wore. Admiral Keppel, and the officers of the Victory say, that they were quite ignorant of this movement of the Formidable.—— But to others, it was very apparent, particularly to Captain Marshall, and the Captain of the Worcester. How so material a motion of the commander in the third post, escaped the notice of those on board the Commander in Chief, I know not. But whatever the cause may have been, I feel this as one of the many instances, in which it was my ill fortune not to be an object of their attention, under any circumstances which place my conduct in an advantageous point of view.

Some time after this wearing, and standing towards the enemy, I perceived that the Admiral had hauled down

down the signal for battle, and shortened sail; and that the same was done by the Vice-Admiral of the Red. This led me to imagine, that the Admiral had given up all thoughts of immediately renewing the action, and I was not mistaken: for the Admiral confesses, and justifies it. At the same time, seeing the whole French fleet wear to come on the starboard tack, and that three of them stood directly towards the Formidable, I directed her to be wore a second time, and advanced to join the Admiral. This step appeared to me to be necessary, to prevent the danger of being cut off; and it was a further inducement to me, that I then did not see any thing to warrant my keeping so near to the enemy, and at such a distance from the Admiral, and the body of the fleet, as I was then alone.

At this period arises the second article of a charge against me, for the origin of which I am also indebted to Rear Admiral Campbell; for it was he who first said, that as the signal for the line, at a cable's length asunder, was then flying on board the Victory, and she was on the larboard tack, I ought to have continued on the same tack, and so a-head of the Admiral; that being my station in the line on the larboard tack.

But the fact is, that we on board the Formidable did not see the signal for the line, till we came a-breast of the Victory. That signal being at the mizen-peak, and the Victory standing end on towards the Formidable, it was impossible that we should see it sooner. It was also invisible to us on board the Arethusa, the repeating frigate; for she had been called in from proceeding to her station, and kept near the Victory, Captain Marshall being actually on board her. This brought both ships into the same position in respect to the Formidable, and rendered it equally impossible to see the signal on board of either. I believe

lieve that I am quite accurate in stating the position of the Victory and Arethusa, at the time I am speaking of—that is, from the second time of the Formidable's wearing, till she passed the Victory: Captain Marshall having been first called by the signal, and then hailed, had been an hour on board the Victory; a very extraordinary circumstance: as it appears, that there were no orders for him, and his being with the repeating frigate out of her usual station during so critical a time, deprived me, and probably some others, of the full opportunity of seeing the signal for the line. At all events, I am certain, that in point of fact, I never saw the signal for the line till we were a-breast the Victory, though I continually directed my attention to her; nor was it seen by any of my officers. This will appear the less extraordinary, when it is considered, that Sir Robert Harland never saw it, whilst on the larboard tack, though his situation on the Victory's weather-bow rendered it indisputably more probable that he should see it, than that I should, when right a-head of the Admiral. Captain La Forey also acknowledges that he did not see the signal for the line, whilst he was on the starboard tack, and the Victory on the larboard tack, till he passed the Victory. It is material to observe that, whilst I was standing towards the Victory no ships were formed in a line a-head, or a-stern of the Admiral, nor was there any other indication of the signal for the line being flying, for it had not been enforced, either by the signal for seeing particular ships out of their stations, or by the signal for particular ships to make more sail, both which signals being at the main topmast head, might have been seen by us, though the signal for the line was invisible. But if I had seen the signal for the line, my wearing and approaching towards the Victory on a contrary tack would have been justifiable; because as I have
already

already explained, the signal for battle was hauled down, and the Victory, with the Vice-Admiral of the Red, and his ships, had shortened sail; and at the same time I saw the French fleet wearing, to come on the starboard tack, and three of their ships pointing towards me. Under these circumstances it appeared to me, that if I had not wore again, and stood to join the Victory, and the rest of our fleet, the three ships of the enemy which pointed to me, would have had it in their power to have separated me from the rest of our fleet. My danger at this time is apparent, even from the evidence of Admiral Keppel himself. About the time of my wearing, he made the signal to wear, and though he was considerably more distant from the enemy, than the Formidable was when she wore, he says, that he should not have deserved the name of an Officer, if he had not wore, founding himself on the circumstances of the enemy's forming their line upon the starboard tack, and his line not being formed. This was only a little before the time, when Sir Robert Harland at a former trial described Admiral Keppel to be in so much danger; seeing him, as Sir Robert said, unsupported, and within the power of the whole French force then a-stern of him, that he was coming down to support him without waiting for orders. If then it would have been so dangerous for the Victory to have continued on the larboard tack, what must have been the consequence, if my ships alone, and so much nearer to the enemy, had remained there? But, notwithstanding all these circumstances to justify me for wearing the second time, and advancing to join the Victory, the Admiral, in his evidence, could not help betraying his inclination to blame me; and Rear-Admiral Campbell, ever industrious to attack me, goes a step further, precipitately and decidedly imputing to me a positive disobedience to a signal which

which I did not, and could not see. This is the more observable, because Admiral Keppel acknowledges, that when I passed the Victory, there was no other ship with her, notwithstanding the signal for the line, and that mine was the last ship which passed him; and further, that he saw no possibility of forming the line on the larboard tack, and had therefore made the signal to wear, which the Formidable had already executed. Yet he approved of all the other ships which passed him, but blames me: how is this partiality to be accounted for, otherwise than by supposing both Admiral Keppel and Rear-Admiral Campbell, to be influenced in their representations of my conduct, by ill will towards me.

One other observation only, seems necessary on this head, which is, that the Admiral himself confesses, that my wearing the second time, coming on the starboard tack, and joining him, did not prevent his renewing the engagement, or produce any other ill effect, and was so far from interfering with his views at the time, that I was only doing that which he was on the point of doing.

A little before three o'clock, the Formidable passed to leeward of the Victory, and in passing the signal for wearing first opened upon us, and then the signal for the line. The latter was soon after repeated by me, notwithstanding the doubts which may have arisen, from its not having been observed by several of the witnesses examined against me. The fact of my repeating it is not only mentioned in the Formidable's log-book, but will be proved by the officers of the ship, particularly the Midshipman whom I appointed to repeat signals, and by other witnesses. It will also be further proved, by a very remarkable piece of evidence, which probably never would have occurred to me, if a member of this Court had not asked one of the

the witnesses, whether a gun was not fired, as it ought to be, when the signal was repeated. This question led me to call for the Gunner's expence book of the Formidable, where, to my great satisfaction, I found a most corroborating evidence of our repeating the signal for the line, namely, an express charge of the expence of powder for the gun fired on the occasion; which appears to be the last gun fired from my ship on the day of action. The Gunner's expence book I shall produce before the Court; and, I hope, that this, with the other evidence, will remove all doubts about a fact, which some of the witnesses against me have so positively denied. I shall also prove that the signal for the line was kept flying till it was dark; except for a short interval, during which it was shifted to make the signal for ships to windward to bear down into the Admiral's wake, the first time of hoisting, more conspicuous, in the same manner as was done on board the Victory. As to the signal for wearing, it was not repeated by me, because being already on the starboard tack, as that signal required, I deemed the repetition improper. Rear-Admiral Campbell, on the trial of Admiral Keppel, spoke as in doubt whether the signal for wearing was made till after I had passed the Victory, saying, that the Victory did not wear till a quarter of an hour after passing on the larboard tack, and to windward of the Formidable; which, to the best of my recollection, is allowing much too long a time; for it appeared to us on board the Formidable, that the Victory wore almost immediately after passing to windward of us. But the Purser of the Arethusa, who took the written minutes of signals on board the repeating frigate, makes this signal for wearing to the starboard tack to have been up half an hour; as by his account it was hoisted at half an hour after two, and Captain Marshall and the Mate of the Arethusa

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agree

agree with him, that it was not hauled down 'till three, consequently it was up a quarter of an hour before I passed to leeward of the Victory; even tho' Admiral Campbell should be correct in supposing that it was so long as a quarter of an hour after the Victory's passing us on the larboard tack before she wore.

Within a few minutes, or to adopt Admiral Campbell's reckoning, a quarter of an hour, after the Formidable's passing the Victory, whilst the latter was on the larboard tack, she wore, and re-passed to leeward of the Formidable, and very near her.

Here it is proper to take notice of a very strong charge of disobedience to signals, which my enemies have repeatedly urged against me, with the utmost confidence, and which has been the great cause, both of the late trial, and all my present sufferings. The charge, as first stated in the public prints, was, that the cause of Admiral Keppel's not re-attacking the French at half past three in the afternoon, was my not joining him, but being at that time four miles to windward with my division. Admiral Keppel, speaking in Parliament a little time before the charge which produced the late trial, though he then seemed to disclaim the imputation of any wilful disobedience on my part, pointed at the same thing; for he asserted that the signal for coming into his wake was flying, from three o'clock, to eight in the evening, unobeyed. In his defence on the late trial, the Admiral pursues the same idea; for he asserts, that the blue flag for ships to windward to come into his wake was hoisted for the first time; because I continued to lye to windward, and by so doing, kept my division from joining him. I am now citing the Admiral's own words, when on his defence; and in the evidence he has given against me on oath, he expressed himself to the same effect; when

when he explained to the Court the occasion of first hoisting the blue flag. But the charges thus boldly asserted, suppose facts, which never existed. According to Capt. Marshall, his purser, and the mate of the *Arethusa*, all speaking from the written minutes of signals taken at the time, the blue flag for ships to windward to come into the Admiral's wake, was first made at twenty-four minutes after three, and it was hauled down a few minutes after; the two former witnesses mentioning thirty minutes after three, and the latter twenty-seven minutes; and all three agree, that it was not made again till thirteen minutes after six.

It is also proved by the minutes of the purser, who was the person appointed by Captain Marshall for the purpose, that the signal for wearing the second time, and coming to the starboard tack was made at thirty minutes after two, and hauled down at three, which shews that, at this latter time, the *Victory* was in the act of wearing, after which she passed the *Formidable* to leeward, so near as to be almost within hail, and went a-head of her, and then edged away, leaving the *Formidable* in her wake. Within so short a time as twenty-four minutes, from the *Victory*'s wearing to the hoisting of the blue flag on board the *Arethusa*, it was absolutely impossible that the *Victory* could have wore, passed the *Formidable*, and got safe a-head of her, but what I must have been much nearer to the *Victory* than the mile prescribed to me by my station in the line; and as by the *Victory*'s edging away I was left in her wake, the blue flag could in no sense be applicable to me; but was it applicable to the ships in general of my division; for all of them, except the *Defiance*, which had joined the Red division, and the *America*, which was far a-head, were a long way to leeward of the Admiral when the blue flag was first hoisted; as will appear from examining the evidence of the several

Captains of my division at the late trial. It also appears by the same testimony, and the Admiral's own account of the ships when he made the signal to wear to the starboard tack, that no ship was near me but the Victory herself; so that, though I had been to windward, I could not be said to have kept the ships of my division with me. So far I justify myself on the supposition, that the Admiral might possibly have got to leeward a little before the first time of making the signal for ships to windward to bear down; and if there was nothing more, I should stand fully exculpated from being the cause of that signal. But an additional fact is come out on the present trial from a witness examined against me, which removes even the possibility of my being the object of the blue flag the first time of hoisting it. Mr. Graham, who took the minutes on board the Arethusa, has informed the Court, that the blue flag, though not repeated on board the repeating frigate till twenty-four minutes after three, was hoisted on board the Victory at fifty-six minutes past two; Captain Marshall not chusing to repeat it till the signal for the line was hauled down on board the Victory to shew it plainer. Compare this with the time of hoisting the signal to wear to the starboard tack, which was thirty minutes past two, and the time of the Victory's actually wearing, which, from the written minutes taken on board the Arethusa, appears to have been at three; and the unavoidable result must be, that the blue flag for ships to windward to bear down was first made when the Formidable was actually to leeward of the Victory. What then becomes of the Admiral's confident assertion, that my still continuing to windward was the cause of this signal? I beg the Court's particular attention to this exposition of the numerous untruths and misrepresentations which have been applied to make the situation

situation of my ship the cause of first hoisting the signal for ships to windward to bear down. I was represented to have been to windward of the Victory, when I was actually to leeward of her. If I had not been to leeward, the time would have placed me in the Admiral's wake, within the distance of my station in the line; whereas the charge supposes me to have been so far, and so long out of his wake, as to require an enforcing signal. I am represented to have continued to windward before the signal was made, which implies that I had been so for some considerable time; but if I had really been to windward, the twenty-four minutes between the Victory's second wearing, and first time of the Arethusa's repeating the signal for ships to windward to bear down, would barely have allowed time for the Victory's passing to leeward of the Formidable—My division is represented to have been to windward of the Admiral, when only one of them was so.—They are said to have been kept near me, when they were at a distance from me, and actually to leeward of the Admiral, and when the only ship near me was the Victory herself. The signal for coming into the Admiral's wake was alledged to be flying from three o'clock in the afternoon to eight o'clock at night, unobeyed by me; but the fact turns out to be, that it was never flying from twenty-seven or thirty minutes after three, to thirteen minutes after six; and it is as certain, that it was not applicable to me at the soonest, till this latter time.

But if neither I nor my division were objects of the blue flag the first time it was hoisted, it may be asked, to what ships it could be applied?—and this I think myself able to explain to the Court, though in strictness my justification requires no more than proving myself not within the meaning of that signal. The Court

Court will please to recollect, that the blue flag was first hoisted at fifty-six minutes after two, at the mizen-peak, with the signal for the line; and that the *Proserpine's* signal was made at three o'clock, to carry a message to Sir Robert Harland, then to windward, to form in the rear of the Admiral, instead of going a-head, which was the proper station of the Red division on the starboard tack; and further, that the signal for the line was hauled down at twenty-three minutes past three, to make the Blue flag the plainer. It is therefore extremely probable, that the Blue flag was first intended for Sir Robert Harland's division to bear down; but lest the signal for the line, the most commanding of all signals, should be understood to controul the blue flag, and so prevent Sir Robert from obeying it. I conclude that Captain Sutton was sent with the message for Sir Robert's forming in the rear; and as he was some time in going, and the Admiral apprehensive perhaps of an attack on himself, and the crippled ships to leeward of him, it is probable, that the original signal for the line was hauled down to prevent any misconception of the blue flag, and to expedite the purpose of the message. If the blue flag, was not intended for Sir Robert Harland's ships to windward, I can no otherwise apply it, than by supposing it made for some ships of the center division, which might be then to windward, instead of being in their stations a-stern of the Admiral. After the two ships had passed each other, the *Formidable* remained for some time, within the length of her station in the line, she being the 9th ship from the *Victory*, and consequently nine cable's lengths, or rather more than a mile from her. But as the Admiral carried more sail than the *Formidable*, in the disabled state of her sail and rigging could make, the former was gradually and constantly encreasing her distance from the latter till night,

night. The particular time when the Formidable was first left beyond the prescribed distance of her station in the line, it is impossible to fix. But whatever the time was, whether an hour or more after being passed by the Victory on the starboard tack, it is the period from which I am to account, for not preserving my station.

To find out whether I used my utmost endeavours to preserve it, there are two things to be observed: first, whether I steered the course proper for getting up to my station again; and secondly, whether I carried all the sail in my power.—If my being out of my station in the line was owing to any failure on my part, it must have been in one or both of these points, and therefore they are the true and proper test of my conduct.

When the Admiral had passed to leeward of us, he edged away, which placed us in his wake, and we continued to steer after him till the Red division passed under our stern to form in the rear, when we hauled a little to windward out of their way.

This, at the same time that it served to give room to the Red division to form, prevented us from being interrupted in refitting our rigging, without producing any inconvenience to us; as it was impossible in our then state to have kept our station between any two ships in a line. But as soon as we had got clear of the Red division, my attention was to keep the Admiral a little open under our lee-bow; which was keeping the command of the wind for taking our station when we got up to the length of it, and were capable of managing our ship in the line. This has been already proved to the Court by the Captain and the Master of the Formidable, who have mentioned the directions I gave on the occasion, and that they were complied with as exactly as was possible,

possible, and that we constantly kept the course I have described. I shall also trouble the Court with further examinations on the same head.

That we carried all the sail in our power, will be fully explained to the Court, when I examine my officers to prove how greatly the Formidable had suffered in her sails and rigging. One of the principal impediments to our keeping up with the Admiral, was our inability to bend our fore-top-sail till between seven and eight in the evening; the reason of which was stated to the Court, both by Captain Bazely and the Master of the Formidable; and if it shall be necessary, it may be further enquired into, when I call them and my other officers.

In the course of the evidence against me, it has been attempted to impress the Court with an idea, that the Formidable was damaged in sails and rigging little more than the ships in general, and not more than the Victory. But the Court will consider and decide on the truth of this insinuation, when all the particulars of our damages are related by my witnesses. In the mean time, it may not be improper to remind the Court, how very improbable it is, from a comparison of our much greater loss in killed and wounded, than the rest of our fleet experienced, that we should not have suffered more in other respects. It fell to the lot of my division to have the greatest share of the action; in consequence of which we had more killed and wounded than Admiral Keppel's and Sir Robert Harland's divisions together; and the Formidable had not only more killed, and many more wounded than any other ship, but even had singly, within two, as many killed and wounded as all the ten ships of Sir Robert Harland's division collectively.

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My enemies have laid much stress on its being so long before the Formidable was refitted, as if we had been tardy and dilatory. But I am confident, that the testimony of my officers, when they are examined, will evince the contrary, and that every possible effort was made to repair our damages in the shortest time. If the time, for which we were so employed, should appear long, the Court will please to consider the many circumstances which concurred against us. The Formidable, I may safely say, had suffered in the action more than any other ship; and as we came last out of action, we consequently began to repair later. The time was still further protracted by our wearing immediately to stand towards the enemy again, and continuing to keep the men at quarters, in expectation of an immediate renewal of the action; so that we did not begin to refit till we came again to the starboard tack, and joined the Admiral. We were also under other singular disadvantages, which retarded our refitting when it did commence. The boatswain was killed in the action, which must be allowed to be a capital loss on such an occasion, in the repair of sails and rigging, those being in his particular department. I was deprived of all use of three of my lieutenants; for one was wounded in the action, and two were so extremely ill, that notwithstanding the greatest anxiety to be upon duty during the action, they were absolutely incapable of coming upon deck. It unfortunately happened too, that there was not one person on board the Formidable, either officer or seaman, who was in her when she was fitted out, or knew how the boatswain's stores were stowed. Having all these difficulties to struggle with, we could not have refitted the ship so soon as we did, if I and my officers, with the men, had not all submitted to the most fatiguing exertions,

without the least remission, till late at night, nor could the business of the repairs have been properly directed, if, by my desire Capt. Bazely had not after the action left the quarter deck to attend on the forecastle, where our principal damage was received, and by his personal activity and superintendance there, endeavoured, as far as was possible, to prevent the inconveniencies from the loss of the three Lieutenants, and the boatswain.

Some have attempted to make use of the circumstance of the Formidable's wearing twice, and sheer-ing out of the way of other ships to my disadvantage, and to persuade the world from her being so far manageable in this respect, that she was manageable for every other purpose, and therefore that this was a proof of her not being so disabled in her sails and rigging as I represent: but I appeal to the experience of sea-officers, whether a ship with any sail, will not easily wear, or when going large, as easily sheer out of the way of other ships, though not able to keep way with another ship carrying more sail than she is capable of setting, which was the case of the Formidable with respect to the Victory.

Another adverse attempt has been made to shew the position of the Formidable when she became to windward of the Admiral, to have been such, that by bearing away she might at any time have fetched into her station. One or two of the officers of the Victory have accordingly placed me in, or near the wind's eye of my station, saying that they saw me almost on the Victory's beam. But none of them pretend to have set the Formidable by compass, and they have been most positively contradicted by Captain Bazely and the Master of the Formidable, both of whom have testified that she was left by the Victory at the distance of three miles, and about three
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points on the Victory's quarter, and one mile to windward of her wake, which together, throws me a mile and a half a-stern of my proper station in the Admiral's wake. They will be confirmed in this by my other officers, and are more likely to be accurate in their observation, because it was their business to regulate the motions of my ship by those of the Victory, and they had my orders to keep the latter a little open on the former's lee-bow, whereas those from whom they differ so widely, had no particular reason to be nicely attentive to the relative positions of the two ships. Capt. Marshall also, who appears to have been generally very accurate in his observations, corroborated the position of the Formidable, as described by my officers, where he explains the relative situation of his own ship, in respect to the Victory and Formidable, when the Fox was sent with the message to me. But what still further exposes the extravagance of placing me in the wind's eye of my station is, its being contradicted by Admiral Keppel, and Rear Admiral Campbell. The former is very vague in describing my position; but as nearly as I can understand him, his remark from the couch does not tend to make me more than four points on the Victory's weather quarter, which, in effect, agrees with Mr. Campbell's account. Such being their ideas of my position, it differs only one point from the account of my officers; for the latter place me three points on the Victory's weather quarter, and it imports little to my defence, which are most correct, when it is considered, that whether I was three or four points on the Victory's weather quarter, I was in either case far a-stern of my station in the Admiral's wake, and consequently could not fetch up to it, except the Victory had shortened sail, or 'till I was able to

set more sail than the Victory. It will scarce be objected, that I should have bore down into the Admiral's wake before I had got up to the length of my station. But lest it should, I submit to the Court that as the Admiral did not bring too, but was constantly encreasing his distance, it was officer and seaman like to keep to windward of my station till I could get the length of it, and was able to preserve it when recovered. The course I steered to reach the length of my station, if it could have been effected, would have brought me within half a mile to windward of it, and bearing down into the Admiral's wake sooner would have been both an interruption to the ships already formed, and acting contrary to the signal for the line then flying, which being more commanding than the other, controuled it.

I have been so long in vindicating myself against the charge of disobedience imputed to me for not being able to keep my station according to the signal for the line, that I am very unwilling to trouble the Court with any other remarks on this part of my case. But the unrelenting invention and ingenuity of my enemies compel me to request a little further indulgence on the same point.

From the purport of some part of the evidence, I can plainly see that it is intended to lead the Court to consider me as the cause of increasing my distance from the Victory.

One mode of encouraging such a supposition, is, that we continually kept close to the wind, whilst the Victory was going large. But the real fact is far otherwise. The course of the Formidable was south the whole afternoon, which was a point or two from the wind. Our log so states the course; and it will be corroborated by the testimony of my officers. The Victory's log falsely represents her to have laid
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to from one to four o'clock, and this falsehood was acknowledged by her master on the late trial. But during the rest of the afternoon her log describes her to have steered South, two points from the wind, till seven in the evening, when she is made to go South East two miles, and afterwards to haul close to wind. This shews that we steered the same course as the Admiral, and so furnishes an answer to the vague and contradictory account of our always hugging our wind. The truth is, that we never kept close to the wind, but always steered with the Admiral in the same direction, a little under our lee, which led us after him on the same course with him, and without altering our position from him, except by an increase of distance; and even if we had been inclined to hug the wind, as is suggested, the bad state of our braces and bowlines would not have allowed it. The nearest we kept to it was a short time after the Admiral's passing us to leeward, which was done, as I have mentioned before, that the Red division, when they passed under our stern to occupy the rear, might have room to effectuate their movement without any interruption from the Formidable.

Another objection, aiming at the same conclusion, is deduced from a comparison of the Victory's log with the Formidable's, as to the rate of sailing. The rate marked in the Formidable's log, from four in the afternoon, is, for the first hour two knots two fathoms, and from six to seven, three knots four fathoms. The Victory's log for the same hours is uniformly two knots each hour.—From this difference the argument attempted is, that my ship outailed the Admiral's, and therefore, that it was my fault, if I did not keep to the length of my station. On the supposition that the two logs were accurately marked, and that there were no evidence to impeach their correctness,

correctness, I am not afraid to acknowledge, that there would be force in this reasoning.

But it would be a dangerous example if Courts-Martial should give implicit credit to the marking of log-books, more particularly when the attention is necessarily so much otherwise engaged, as it must have been at the time in question, when we had been in action with the enemy, and still continued in sight of them for farther engagement. A man must be little accustomed to naval engagements, who in such critical and busy moments expects great accuracy in marking either the rates of a ship's sailing, or any other particulars, and what commander of a ship would be safe, if his life and honour were to be decided upon by such an uncertain and fallible test?—Former Courts-Martial have been so aware of this, that though it is usual to call for log-books to inspect them, they are not in strictness considered as evidence, and so Admiral Byng was told at his trial. But notwithstanding log-books should for the present purpose be received as admissible evidence, the danger of being much influenced by their contents will be the same; and in the particular instance of the *Victory's* log, besides the general objection, many special reasons will occur to dissuade relying upon it. None have pretended that her log was hove, so that the rate of sailing is mere guess. The log describes the *Victory* to have laid too in the afternoon of the 27th, from one o'clock till four, during which important hours neither the rate of sailing or course are marked. But the master and other officers of the *Victory* at the trial of Admiral Keppel, and now, acknowledge that she did not once lie to in any part of that afternoon, and this fact is also acknowledged by Admiral Campbell.

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The Victory's log makes the second time of hoisting the signal for ships to windward to bear down into the Admiral's wake half after four. But though exactness as to the time of hoisting this signal the second time is of great consequence to a proper understanding of the transactions of the day, the time is grossly misstated: for it has been proved by the written minutes taken on board the *Arethusa*, and the concurrent testimony of Capt Marshall and his purser, that the real time was thirteen minutes after six. Again, the Victory's log-book mentions that the signals for the *Prince George* and *Bienfaisant* to chase the three French ships, was made at four in the morning of the 28th, and that they were called in at nine, which supposes them to have been chasing five hours, but it is notorious, from the evidence on the present one, that these two ships were called in within half an hour after the signal for chasing was made.

These errors and falsification, whether innocently introduced or not, are sufficient to destroy the credit of the Victory's log-book; but there is yet a great deal more to impeach its authority, as to the rate of sailing. Though the Victory's log marks the rate to have been uniformly two knots from four o'clock till ten at night, yet Admiral Campbell impliedly admitted that the rate was sometimes greater, when he said he did not believe that the Victory went above three or three and a half knots any part of the time.

This shews that he considers her rate of sailing as undermarked. The log of the *Foudroyant*, which ship the Captain proves to have been in her station next a-stern of the Admiral from three in the afternoon, nearly corresponds with the *Formidable's* log, as to rate of sailing, and, therefore, if the *Foudroyant's* is not overmarked, the Victory's must be undermarked.

marked. The master of the Victory, and others, represent the weather in the afternoon of the 27th, to have been squally and unsettled, though not blowing hard. But it is likely that the Victory, under so much sail as she is described to have had set, and during the hours she was going two points from the wind, should not go more than two knots an hour. —At seven the Victory hauled her wind, and kept close to it all night, and till eight carried the same sail as when she was going from the wind. But still her log allows two knots an hour, as if she went as fast with much less sail by a wind, as when she was going with more sail from the wind. All this shews how unsafe it is to trust to the rate of sailing marked in the Victory's log-book. But I do not mean to have it understood, that the Victory's log-book is the only inaccurate one. Probably the rate of sailing in the Formidable's log was marked with equal incorrectness, and if we suppose her log to have been as much over-marked as the Victory's appears to have been undermarked, this, with the circumstance of the Formidable's bad steering from the want of head-sail, will account for the difference between the two logs, and reconcile the Admiral's out-sailing me. At the same time, I do not found any argument in my favour on so uncertain a basis as an entry of the rate of sailing made on a guess and random calculation, in the hurry after the engagement. My view is to resist any argument on either side from so dangerous a source, and to draw the attention of the Court to the strong evidence of the correspondent course of the Victory and Formidable, and that unerring test, the fact of the Admiral's encreasing his distance, notwithstanding my steering the same course, and carrying all the sail in my power.

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The next article which I conceive to be intended as a charge against me, after the signal for the line, and that for bearing down into the Admiral's wake, the first time of hoisting, is the latter signal, the second time it was made. Mr. Keppel, in his defence on the late trial says, that this last signal was made a quarter before five ; his log-book makes the time half an hour after four ; and Mr. Moore, who assisted the Admiral's secretary, spoke on the late trial to the same time as the log. Mr. Campbell is still more early in point of time, he having in effect said, that the Blue flag was hoisted again within a few minutes after being hauled down, which makes the second time of hoisting the Blue flag to have been before four : but all these representations are now proved to be contrary to the real truth ; each being very remote from it ; but Mr. Campbell most extravagantly so. For fixing this point beyond a doubt, I am obliged to Captain Marshall, his purser, and the mate of the *Arethusa*, examined at the late trial, all of whom swear to the Blue flag's not being hoisted the second time till thirteen minutes after six, and found themselves on the written minutes taken at the time. Captain Marshall, when asked the question upon oath whether the Blue flag was flying between thirty minutes after three, and thirteen minutes after six, adding an answer in the negative.—This also is a very operative detection of the false statement of time by the Admiral and his officers. It relates to a very material signal, it being the first made for coming into the Admiral's wake, which could have the least application to me ; and as it was the first signal or notice for enforcing my compliance with the signal for a line, it demonstrated that even the Admiral himself did not expect my division to be in a condition to get into our station till after six. That

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he did not look for me or my ships sooner is also apparent from his filling my station with the Red division, 'till more than half an hour after five: even Sir Robert Harland's Captain having informed the Court that it was not till that time that Sir Robert received the message for quitting the rear and occupying his proper station. Whether the position of the Vice of the Red's division, whilst in the rear, was or was not such as absolutely to exclude my division, 'till the former had left it, is a nicety scarcely worth contending for with Mr. Keppel; because its being occupied by Sir Robert Harland is not the reason I give for being to windward, and a-stern of my station, but I only advert to the fact, to corroborate what I infer from the late hour of the first enforcing signal for calling me into the line. In respect to my conduct on seeing the signal for coming into the Admiral's wake, I obeyed it to the extent of my power; I repeated, and I continued those efforts for fetching the length of my station, in which I had been so assiduous before, that there was no room for further exertions. The former will be proved by my officers, and is indeed allowed by the witnesses against me. What the impediments were which prevented the latter, particularly our inability to set the fore top-sail till between seven and eight, I have already explained at large.

In less than half an hour after the second time of hoisting the Blue flag, or signal for bearing down into the Admiral's wake, the pennants of particular ships of my division were added to the Blue flag. These pennants were repeated on board Captain Marshall's ship at thirty-six minutes after six; and immediately on being seen, they were repeated on board the Formidable. Had the Admiral thought the ships of my division in a condition to come into their station in the line sooner, why did he delay hoisting their pennants
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till so late an hour? It is also observable, that the pennant of the Formidable was not amongst those hoisted.

Next comes the message to me from the Admiral by Captain Windsor in the Fox; and as my enemies have made the supposed disobedience of it so frequent a topic of accusation, it is necessary that I should consider the circumstances relative to it in a very particular manner; in doing which I must be deluded by the most unaccountable misapprehension and error, if I am not able to falsify the story about this message almost from beginning to end. To examine all its parts with the minuteness that is requisite to disappoint the unwarrantable inferences from it, I beg the attention of the Court to the time of sending the message, the time of its being delivered, and the words of it.

Admiral Keppel, in his defence on the late trial, asserts, that he sent the message at five o'clock: Captain Windsor, who carried it, and other witnesses, have sworn even to an earlier time; but they are all falsified by the concurrent testimony of Captain Marshall, Mr. Graham, his purser; Mr. Cawsey, Mate of the Arethusa, and the written minutes of the Purser, taken when the signals were repeated;—evidence which Mr. Keppel himself cannot controvert with any grace, after the great encomiums he has so justly passed upon the extraordinary accuracy of Captain Marshall in repeating signals. If Captain Marshall, his officers, and the minutes in writing, taken by his direction at the time, are to be depended upon more than other witnesses, speaking from mere recollection, the signal for the Fox to come within hail of the Victory, to receive the message, was not till thirty two minutes after five; that is, above half an hour after it is represented by Mr. Keppel, his officers, and Captain Windsor, to have been delivered.—If Captain

Marshall, whose station was three miles to windward of the Victory's beam, is to be credited, Captain Windsor could not have less than that distance to go before he could come within hail of the Victory to receive the message, and must have been half an hour in going to her; and the written minutes taken under the direction of Captain Marshall prove, that Captain Windsor did not arrive within hail of the Victory in less than half an hour; for they take notice that the signal for the Fox was hauled down at three minutes after six. These facts together demonstrate, that the time of Admiral Keppel's sending the message was not at five, or a little before, but a little after six.

Mr. Keppel, speaking on his oath has said, that he called the frigate which carried the orders to Sir Robert Harland to go to his proper station in the van, and which was the Milford, at the same time that he called the Fox to carry the message to me. This leads to fixing five as the hour of sending the message by the Fox. But Admiral Keppel is most directly contradicted by Captain Marshall, and his purser also speaking on oath, and their written minutes; according to which the Milford's was made ten minutes before four, and hauled in thirty three minutes after four; but the Fox's signal was not made till thirty two minutes after five, and not hauled in till three minutes after six. In other words, instead of Mr. Keppel's sending these two frigates at or about the same time, there was a difference of an hour and an half between dispatching them. This striking error, in antedating the dispatch of the message by the Fox one hour and an half, may, as I can plainly see, be convenient to the plan of my destruction. But how it is otherwise to be accounted for is the business of Mr. Keppel to explain. I hope, for his own sake, that he confounded the Proserpine's signal with the Milford's.

Milford's.—The Proserpine's was hoisted twenty two minutes after five, and hauled in two minutes after six; as appears from the same written minutes taken on board the repeating frigate. This brings the Proserpine and Fox within hail of the Victory one minute after each other. But unfortunately for Mr. Keppel, the Milford, and not the Proserpine, was the frigate sent with the orders to Sir Robert Harland; nor can Mr. Keppel avail himself of the apology I have thus created for him, without sacrificing the credit of Captain Windsor, Captain Berkely, Lieutenant Bertie, and those officers of the Victory; particularly Admiral Campbell and Mr. Rogers, who have positively fixed sending the Fox at a much earlier time in the afternoon, nor without acknowledging the truth and accuracy of the officers of the Formidable.

The time of delivering the message sent by the Fox, is falsified in the same extraordinary way as the time of sending it. Captain Windsor, who carried the message, swore, at the late trial, that he came within hail of the Formidable, and delivered the message to me nearly about half an hour after five; and being questioned at the present one to the same point, he repeated the same words; but the Court is in possession of that, which abundantly proves that Captain Windsor is still grossly erroneous in speaking of time. It is already shewn that he did not receive the message till after six, and he allows half an hour in getting to the Formidable, which, without more, renders his delivery of the message to me at about half an hour after five impossible; but other circumstances concur to disprove the evidence of Captain Windsor in a still greater extent. He allows himself only half an hour to carry the message; but the Formidable is proved to have been three points on the Victory's weather quarter, and three miles distant; and Captain Windsor acknowledges,

knowledges, that to fetch the Formidable, he made a circuit, going to leeward of all the ships of the center division that were formed a-stern of the Victory, and was forced to change his tack; all this so increased the space he had to traverse, that though he went six or seven knots, as he calculates, it must have required considerably more than an hour before he could reach me. This postpones the time of delivering the message 'till between seven and eight in the evening, and corresponds with the account of my officers, who are all positive that the Fox did not come within hail of the Formidable till near about sun set, which on the 27th of July, and in the latitude of Ushant, where we then were, is a little after half past seven.—Other corroborating proofs that this was the time I received the message, are, that we had repeated the Blue flag the second time of its being hoisted, which was at thirteen minutes after six; and that we had also repeated the pennants of particular ships of my division, which, by Captain Marshall and the written minutes taken on board his ship, were not hoisted till thirty six minutes after six, a considerable time before the Fox hailed us. It is further ascertained by the circumstance of our not being able to bend our fore top-sail till a little before eight; in doing which, both Captain Windsor and Lieutenant Bertie observed us to be employed, whilst the Fox was near the Formidable. Thus, from the evidence of Captain Marshall, whose most justly distinguished accuracy as a repeater of signals the Court has heard such warm encomiums upon, from the written minutes taken on board his ship at the time, and from a combination of circumstances, not gleaned without great labour and difficulty out of the great mass of evidence on the late and present trial; the result is, that a message sworn to have been delivered to me at half past five was not really delivered
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till half past seven. How material the error of two hours in stating this message is, will strike every one who hears me, when it is recollected what an influence time has on the supposed import of the message. If the message was delivered at half an hour after five, it might not have been too late to re-engage, had such been the Admiral's intention; and other circumstances independent of time, did not obstruct him; but at a quarter of an hour after seven in the evening, that is a quarter of an hour before the message reached me, it is confessed by Mr. Campbell to have been so late, that the Admiral had then given up all thoughts of re-engaging.

There is almost as great a disagreement about the words of the message, as about the time of its being sent, and received. According to Capt. Windsor, Lieut. Bertie, and the officers of the *Victory*, the message delivered to me imported, not only that the Admiral wanted the ships of my division to come down into his wake, but farther, that it extended to me, as well as the ships of my division, and that he waited for me to renew the action. The first part of the message I acknowledge receiving; but I deny that the message repeated to me, mentioned either me, or the waiting for me to engage; and the few on board my ship who were present when it was delivered, agree with me in their account of it, for they say that it was simply confined to the Admiral's wanting the ships of my division. On this contrariety of evidence about the words, and import of the message, it is the office of the Court to decide who are best entitled to belief, and which of the two representations carries with it most appearance of probability.

But it may not be improper to submit to the Court some few considerations against yielding to the seeming weight

weight of evidence for the terms of the message as it is stated against me.

The witnesses who have spoken so positively to mentioning that the Admiral waited for me to re-engage, stand convicted of the grossest errors in their relation both of the times of receiving the message, and of the time of delivering it; in the former more than one hour; in the latter more than two. They own too, that they speak the words entirely from memory, never having committed them to writing. But how can the Court safely trust to the frail memory of persons thus exceedingly erroneous as to the time of the message for the words of it, in preference to those against whose testimony no such objection lies.

The Admiral was not waiting for me, nor had he been waiting any part of the afternoon; but as Admiral Campbell acknowledges the Victory had been the whole afternoon under the same sail, which was more than the Formidable could carry till her fore-top-sail was bent, which was not till about eight o'clock. How improbable is it that Admiral Keppel should send me a message to tell me, that he was waiting for me, when he was not waiting? As it has been asserted, that he had been waiting for me, and my division, the whole afternoon, to re-engage, and so early as half an hour after four, was become wearied with fruitless expectations; what was the reason that no enforcing signal was made either for me, or my division, till thirteen minutes after six? Why were the signals for particular ships of my division postponed till thirty-six minutes after six? As I judged, it would have been unreasonable to expect that my division, which had suffered so particularly in the action, and were latest out of it, should be fit to take their stations in the line sooner; and from his conduct in not making the particular signals till more than half an hour after six, it seems

as if the Admiral was of the same opinion. If the Admiral was dissatisfied with not seeing these last signals immediately complied with, why did he not express his disappointment by going a step further and making signals for them to make more sail? In respect to my ship, the particular signal for it was never made; but if my being out of the line was so unaccountable to him at half an hour after four, why did he omit to make any particular signal two hours after, when he called in the ships of my division? If he was so impatient to re-engage, and I was the obstacle, would not making my particular signal have been a more expeditious way of informing me, than sending a message which took up more than an hour in carrying? If he meant to be delicate, as he professes, would not the silent, and disguised censure of a strong signal have been equally expressive, yet more delicate than the harsh and coarse language of a trimming message? If the object of the message to me, was, to renew the engagement, why was he so long before he sent it, that it could not reach me till considerably after the latest time in the evening fixed by himself, and his friends, for another action?

Other circumstances which operate against the idea of an intention to re-engage in the afternoon of the 27th, and consequently against a message to that effect, might be enlarged upon; such as, suffering the van division to occupy my post next the enemy, till after five; the late hour of the Red division's resuming their proper station in the van; the improbability of meaning to renew the engagement with my disabled, unfitted, and full dispersed division, instead of Sir Robert Harland's fresh and collected ships, and the incomplete forming of the center division, even after six. But it would be almost endless to pursue these topics, and therefore I hasten to a more decisive in-

dication of the designed import of the message. I mean, Admiral Keppel's own comment.

In Admiral Keppel's public letter about the engagement, he declares, that he allowed the French to reform their line in the afternoon of the 27th, with an expectation that they would try their force with us the next morning. Is not this language an avowal by Mr. Keppel, that the next morning was the time he had in view for re-engaging? The log-book of the *Victory* is of the same tendency; for it takes notice of preparing to renew the engagement at day-light the next morning; but is without one syllable about renewing the action the preceding afternoon. When it was first inserted in the public prints, that the message to me was to signify, that the Admiral waited for me and my division to renew the action, I appealed to Mr. Keppel to protect me against so cruel a misrepresentation, asking him, whether it was possible that he ever should send me such a message? And though he declined doing me the full justice I expected, yet he would not say, that he had sent such message, but replied in these remarkable terms, "I am told that such words were used." But if he had been convinced, that such was the message, could he have hesitated avowing it? Would he have referred to the report of other persons? His language upon oath is of the same undecided, ambiguous kind. He will not say that he sent that message; he cannot trust to his own remembrance of it; he cannot exactly recollect the words. He leaves the labour and hazard of recollection to his own officers, particularly Admiral Campbell, whose ill offices I have experienced in a great variety of instances. But whatever the terms of the message were, whether it was for my division to come into their stations, or whether it was the Admiral waited for me and my division to renew the engagement; I trust, that

that I shall be found to have done all that could be expected at the very late hour I received it. Whatever might be the Admiral's intention, when he sent the message to me, it did not come to me till after that time was passed, at which Rear-Admiral Campbell confesses, that the Admiral had relinquished every idea of a further engagement till the next day. Convinced that a night engagement was not the object of the Admiral, it only remained for me to continue my efforts for completing the repairs of the rigging, more especially in setting my fore top-sail; in which I was so successful, as to get into my station in the line, and to be quite ready for action again before day-light in the morning.

As to sending a message to inform the Admiral of my inability to get the length of my station; making a signal of distress, or shifting my flag, they did not strike me at the time, as either necessary or applicable to the circumstances, under which I acted; nor do I yet know of any reason, which, on a review of my situation the evening of the day of the engagement, should induce such an opinion. But I have already expended so much time, in my observations on the subject of the message, that I find myself forced to postpone the particular reasons which may evince the propriety of my not adopting either of those measures, till the close of the examination of my witnesses, when I hope to be indulged by the Court with a hearing of such further remarks as shall then appear necessary for my final justification.

After the message, I know only of two other articles hinted at against me, which require the least notice; and in respect of them very few words will be necessary.

One is, that I did not carry my distinguishing lights the evening of the 27th. But my witnesses, particu-

larly some whose business it was to attend the lights, will prove the fact of my carrying all of them. When this matter was first questioned, I really thought it probable, that the top light was not kept burning; because I recollect being told of some difficulty about it, from a wound the lantern had received in the action, and that I observed it was of no great consequence; but I gave no orders to countermand any of the lights; and always took for granted, that my stern light was kept burning the whole night.

The remaining article relates to the situation of my ship, at day-break, the morning of the 28th. Sir Charles Douglas, from an observation he made, at the dawn of day, conceives that he then saw my ship greatly a-head of my station, in the line. But though I have not the least doubt, that he says what he believes to be truth; yet I am persuaded, he must have mistaken some other ship for mine. In the course of the trial, I shall examine some witnesses to prove, that I really was a-stern of the Admiral, at the time when it is supposed that I had got a-head of him.

I now draw near to a conclusion for the present, having only to remind the Court in what light Admiral Keppel viewed my behaviour on the two days to which the Courts enquiries are limited, before the commencement of those differences from which the present trial originates.

The day but one after this action, I visited the Admiral on board the Victory. He received me with his usual marks of regard, friendship, and confidence, without the most distant hint of being dissatisfied with the least part of my conduct; on the contrary, he communicated to me the draught of a letter he intended to send to the Admiralty, either the same, or one very little different from that afterwards published in the Gazette: he discoursed with me on several parts
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of the letter; and when he came to the part in which he praises Sir Robert Harland and me by name, for our spirited behaviour, he said he thought it best to mention it in a general way, without particularizing; and this came from him in such a manner, that I thought he alluded to my ships having been so much more engaged, and having suffered so much more than Sir Robert Harland's.

Is it possible that Admiral Keppel should be capable of so much duplicity as to have thus commended me in a public letter, in the same ample manner as Sir Robert Harland, and to have thus communicated with me on the subject of it, if he had then entertained the least ill opinion of any part of my conduct?—In this Court, Mr. Keppel, being on his oath, endeavoured to qualify his commendation of me by narrowing it to my behaviour in time of action, and spoke as if his letter was so expressed.—But the letter itself contains no such qualification, and I did not wonder to see him under embarrassment, when he so disingenuously endeavoured to controul the effect of his open praise, by having recourse to secret and mental reservation. Soon after we arrived at Plymouth, Mr. Keppel received a letter from the Secretary of the Admiralty, which contained his Majesty's approbation of my conduct, repeated in Mr. Keppel's own words, and expressed to be founded upon his representation. This letter was also shewn to me by Admiral Keppel. Before we left Plymouth for a second cruize, he wrote a second letter to the Admiralty, in which he once more includes me in the praise and commendation of the officers under him,

After such unqualified and deliberate acts of approbation of my conduct on the 27th of last July from Mr. Keppel, as I have here enumerated, it will be difficult for him to account for his present censures of
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my conduct on the same day, without either fixing on himself a charge of the greatest duplicity, or of suffering his evidence on oath to be influenced by the spirit of anger and revenge.

Here, Gentlemen, I close my defence for the present, surrendering both my life and honour into the hands of the court, with a full assurance that I shall meet with the same protection from you as each would expect from his brother-officers in a like situation, and that you will not allow truth and innocence to be made a sacrifice to the clamour and noise of party, or to the prejudiced testimony of persons avowedly acting from the dictates of private malice.

Gentlemen, I will detain you with only one sentence more. My mind sees no medium between life with entire honour, and death without; and I ardently wish that your judgment, be it what it will, may be directed by the same alternative.

Thursday, April 29.

Admiral Sir THOMAS PYE, Knight, called in, and sworn.

Sir Hugh Palliser. As it will be of great importance to me in the course of my defence, to authenticate signals that were flying on the 27th of July, I have therefore called Sir Thomas Pye relative to a paper which was delivered to him while sitting as President of a late court-martial, by Captain Marshall of the *Arethusa* frigate; and I would ask him if he received that paper [which was here produced] from the hands of Capt. Marshall, and whether it was admitted as an authentic copy?

Sir Thomas Pye. To the best of my recollection there was such a paper delivered to me; but whether this be it, or no, I cannot, at this distant period, pretend

pretend to say. I should have had previous notice to have endeavoured to recollect it.

Judge Advocate. This paper was delivered by Captain Marshall to Sir Thomas Pye at the late trial; I received it then as an authentic paper, and as such laid it before the court.

Sir Chaloner Ogle. I should think its authenticity sufficient for us to go by.

Sir Hugh Palliser. If the Court are satisfied, I am.

The Judge Advocate, however, thinking it improper that the paper should be identified by his bare assertion of the fact, begged leave to be sworn; which being done, he immediately settled the point, by informing the Court, that the very paper now before them was that delivered into Court by Captain Marshall on the late trial of Admiral Keppel, and annexed to the minutes thereof, as an authentic copy of signals taken by Mr. Causey, master of the *Arethusa*; for on the back of it he [the Judge Advocate] had written a notation of its being received into Court the 19th of January, 1779, and attested by his own signature.

Sir Hugh Palliser. Then give me leave, Sir, to ask you a question or two relative to it.—Was that paper sworn to by the master of the *Arethusa*, as his own hand writing?

A. It was.

Q. Did he swear that he copied it from the minute-book himself the evening of the 27th of July?

A. He said he did.

Q. Did he swear the original minute-book was lost from whence he took it?

A. He swore it was lost; the minutes were originally taken in pencil, from which he took this copy.

Q. Did

Q. Did he swear he delivered that paper to Captain Marshall?

A. He did.

Sir Hugh Palliser. I will just point out three signals contained therein.

Q. By that paper at what time does it appear that the yellow pennant at the mizen-topmast-head was hoisted and hauled down; the Milford's signal?

A. Hoisted at 50 minutes past 3; hauled down 33 minutes past 4.

Q. At what time was the yellow pennant hoisted at the main topmast-head and hauled down, the *Proserpine's* signal?

A. Hoisted at 22 minutes past 5, hauled down at 2 minutes past 6.

Q. At what time was the yellow pennant at the starboard main-topfail yard-arm, the Fox's signal hauled down, and when hoisted?

A. Thirty-two minutes past 5 hoisted; hauled down 3 minutes past 6.

Q. What time was the blue flag at the mizen-peak hoisted the first time for ships to windward to bear down?

A. It does not appear for what purpose, but such a signal was hoisted 24 minutes past 3, and hauled down 30 minutes past 3.

Q. Does it appear to have been hoisted again any time between 24 minutes after 3 and 30 minutes past 3?

A. It was hoisted again at 13 minutes after 6, and it does not appear when it was hauled down after that.

Sir Hugh Palliser. Is then the whole of that paper admitted as authentic evidence by this Court?

President. I believe so.

Judge Advocate. It has been read already as a part of Captain Marshall's evidence. [Here

[Here the Court was cleared at the request of Captain Duncan, to consider whether the whole of the minutes of the signals should not be taken down, which however was soon determined in the negative.]

Sir WILLIAM BURNABY, Captain of the Milford frigate, called in and sworn.

Q. When you received orders from the Victory in the afternoon the 27th of July, was any other frigate near the Victory at that time receiving orders?

A. None that I saw, or heard of.

Q. Did you take notice of the condition of the rigging and sails of the Formidable on that afternoon, and what observations did you make?

A. The Formidable appeared to me to be very much disabled during the whole course of that afternoon; I saw her about an hour after she came out of action.

Sir Hugh Palliser. I have no more questions to ask Sir William Burnaby.

Sir Chal. Ogle. Do you know at what time you left Admiral Keppel to go to Sir Robert Harland?

A. About three quarters after four, as near as I can remember.

Q. At what time did you join Sir Robert Harland?

A. A very few minutes after; a little before five o'clock.

President. What general signals were then flying on board the Victory at the time you left her?

A. I do not particularly remember, but I think the signal for the line of battle was one of them.

Sir Chal. Ogle. Did you perceive it on board the Formidable when you took notice of her sails, or any other time that afternoon?

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A. No.

A. No, I did not; but I was at a great distance from her.

Capt. Colpoys. Was the Milford the frigate appointed to attend the Vice-Admiral of the Blue's division?

A. She was.

Q. Where was she for the most part of the evening of the 27th after the fleet were on the starboard tack?

A. A good way to leeward, and a-head of the Formidable, being called down to the Victory; it might be a little after seven when I got afterwards into my station upon the weather bow of the Formidable.

Q. What was the condition of the Formidable at the time you got into your station, with respect to her sails and rigging?

A. She appeared to be still much damaged in both, from the general view I had of her.

Q. What was her situation with regard to the Victory at that time?

A. She was a good way a-stern, and pretty well to windward.

Q. How near do you suppose you were then to the Formidable?

A. I don't exactly recollect; perhaps a mile, or more.

Q. What general signals had she out at that time?

A. I do not know.

Q. Did you, at any time in the afternoon, see the blue flag at the mizen peak on board the Victory?

A. I certainly must have seen it; but I don't recollect it at this time, so as to answer that question positively.

Q. Did you see the blue flag at any time on board the Formidable?

A. I have

A. I have said before I do not recollect to have seen it.

Q. Did you see the Fox's signal at any time that afternoon to speak with the Admiral?

A. No; I did not.

Q. Did you see her at any time bear down to the Admiral?

A. I do not recollect to have seen the Fox the whole afternoon after coming out of the action.

Q. Do you recollect seeing the Fox coming near the Formidable in the evening?

A. No; I do not.

Q. Did you take any notice of the Formidable in the course of the night?

A. I do not recollect to have taken any particular notice; I gave orders to be as near to my station as possible.

Q. Do you know whether the Formidable had any distinguishing lights out that night?

A. I do not recollect to have seen any.

Q. Was you upon deck at day-light in the morning of the 28th, and did you then see the Formidable, and where was she with respect to the Victory?

A. I cannot speak positively to the situation of the Formidable; my signal was soon made to go on board the Victory, which I obeyed, and therefore took no notice of the Formidable.

Sir William Burnaby being discharged from further attendance, withdrew.

Captain BAZELEY called in again.

Sir Hugh Palliser. I do not mean to interrogate Captain Bazely as to the facts he answered fully, when examined in support of the prosecution, and therefore shall not trouble him, or the Court, with many questions.

Q. How near was the nearest of our ships a-head or a-stern of the Formidable at the time of her going into the action?

A. The nearest a-head half a mile, and the nearest a-stern a full mile, to the best of my judgment and recollection.

Q. After the Formidable was wore in the rear of the enemy, were there any preparations ordered on board her for renewing the action?

A. Officers and ship's company were immediately ordered to quarters.

Q. How near were we at that time to the enemy?

A. Within random shot.

Q. Were there any shot fired at us at that time?

A. After the helm was a-weather, and the ship in the act of wearing, two or three shot were fired at her from the sternmost ship of the enemy's rear.

Q. From the circumstances you described to the Court the other day, of the Formidable's situation, I would ask you now, do you think whatever message might have been sent, or signals made, that it was possible for the Formidable to get into her station in the line that day?

A. It was impossible, without the Admiral had shortened sail to give us that opportunity.

Q. Was it safe to set more sail upon the foremast sooner than it was done?

A. By no means safe in any respect whatever.

Q. Can you give any account of the damages; if you can produce them?

A. I have them in writing, if the Court will permit me to refer to them.

Court. By all means.

[Here a list was delivered in of the damages in masts, yards, sails, and rigging, &c.]

Sir

Sir Chal. Ogle. Do you deliver in this account as of your own knowledge, and strictly true?

A. Yes; certainly I do.

Sir Hugh Palliser. Have you the carpenter's damages; if you have, please to deliver those in likewise.

A. I have.

[Here another paper of the damages sustained in the Formidable's hull, was likewise read.]

Sir Hugh Palliser. Were any of the Lieutenants of the Formidable so ill as not to be able to come on deck on the 27th of July?

A. The fifth and sixth Lieutenants were so ill as not to be able to go to quarters; the third Lieutenant was wounded in the action, and the boatswain killed. The loss of these officers proved a very great impediment to the refitting the ship, and which we very sensibly experienced, as we had very few petty officers on board who had ever been in the service before, and not a man in the ship knew where the boatswain kept his stores, none of them being on board when she took them in.

Q. At what time were orders given on board the Formidable for preparing again for action on the morning of the 28th of July, and when did the drum beat to arms?

A. At two o'clock in the morning; when the officers had repeated their quarters, we bore up, and took our station in the line a-stern of the Victory, before the day was fairly open.

Q. Did the men on board the Formidable behave with spirit and good order?

A. Every praise is due from me to the officers and ships company for their spirit during the action, and for their vigilance and attention to their duty afterwards in refitting the ship; not one of them having
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a single moment's refreshment before ten o'clock that night.

Q. Was any liquor given to the men till after their work was done? what time was liquor given them, and how much?

A. None, to my knowledge, was given to the men till after ten o'clock at night, when the Vice-Admiral ordered each man half a pint of wine for their good behaviour, and as some recompence for the many hours they had been laboriously employed in refitting the ship.

Q. Did I express my anxiety during the afternoon and the night for getting the ship refitted, and getting up with the Admiral?

A. Very anxious both in the afternoon and night, and to my certain knowledge the Vice-Admiral was never off the deck for fifteen minutes from our wearing at ten o'clock in the morning till ten o'clock at night, when the ship was refitted: I never left the deck myself, and therefore can speak to it positively.

Q. Did I desire you in the afternoon to go upon the fore-castle yourself, and why?

A. I received the Vice-Admiral's orders to go forward to attend to the repairs of the fore-mast, &c. the Vice-Admiral telling me at the same time, that he and two Lieutenants would attend to those of the mizen and main-mast; at times I went aft from the fore-castle to the quarter-deck.

Cross-Examined.

Captain Duncan. How long were you in action as you have described, till you perceived any ships near you, and what were their names, if you recollect seeing any, and at what time?

A. I recollect one ship passing under the Formidable's lee-quarter, while we were in action, but
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her name I do not recollect ; nor do I know the exact time.

Q. Was that one of the ships a-head or a-stern that you have mentioned, or were they nearer to you than those you have mentioned.

A. I do believe she was one of the ships that were a-stern of the Formidable ; and what makes me think so is, she came up with all her top-gallant, and all her other sails set except her mainsail, and we had our mizen topsail a-back, and all our stay sail sheets eased off between the main and foremast. When the Formidable first begun the action, the Ocean was about four cables length upon our lee-bow, and a little a-head with all ; to the best of my recollection, no other ship was near to my knowledge : the enemy was passing us upon the starboard side.

Q. Do you recollect what number of ships were near the Formidable about the time of sunset on the evening of the 27th ?

A. I only remember two ships, which I took to be the Egmont and America ; but I cannot speak positively to them.

Q. When you bore down in your station at half past two o'clock, did you perceive the Victory's lights, and when the day broke, what was the position of the Formidable with respect to the Victory ?

A. I have already answered that question in a former evidence ; but I will answer it again. When we bore up, I distinctly saw the stern and top lights of the Victory, soon after which we brought the two lights into one, when as near as my recollection will carry me, we were then in a direct line, about a mile a-stern of the Victory : at break of day, the Ocean, I think, was the ship next a-stern of us, one of the enemies ships being about a mile to leeward of our quarter ?

Q. What

Q. What distance do you suppose the Ocean was from you ?

A. I cannot speak positively ; I should suppose about two or three cable's length.

Q. Do you recollect the ship that was a-head of you ?

A. I do not.

Q. Do you recollect when you bent a new fore sail ?

A. Yes ; when the fleet brought too on the morning of the 28th, with their heads to the North West.

Q. Were your fore-topgallant-yard, and fore-topgallant mast across all the afternoon, or was the former got down ?

A. The fore-topgallant-yard was got down between sun-set and dark, and the fore-topgallant-mast struck, and hung in the top rope.

President. Was the fleet laying too at that time, or did you keep your way ?

A. No ; she would not steer kindly within a point one way or other.

Q. Can you assign any reason why the fore-topgallant yard was not got down, and the topgallant mast struck ?

A. I then judged it too dangerous to send men to the fore-top-mast-head, till the mast was secured, expecting it must have went by the beam, if an attempt had been made, from the rottenness of her mast, and there being only one fore weather shroud standing.

Captain Robinson. Had not you repaired the fore-sail that was to the yard, so as to make it useful in the afternoon or night of the 27th ?

A. No ; we had no opportunity, the sail being set, till the fleet brought too in the morning of the 28th, with their heads to the northward.

Captain Bazely withdrew.

JOHN

JOHN BICKERSON, Carpenter of the Formidable
called in and sworn.

Q. You will give an account of the condition of the foremast after the action, and if you have any parts of the mast produce them.

[Here the evidence, after giving an account of the dangerous wounds the mast had received, produced a large paper bag of rotten touch-wood, which he swore was taken from the very heart of the Formidable's foremast. Captain Duncan observed that this was taken out since she came to Portsmouth, but the Carpenter informed the Court, that a much larger quantity of it had been taken out at Plymouth immediately on her return from sea, which was not reserved, no one supposing it could ever be wanting; but it was a fact, which the workmen in that yard could at any time attest.]

Captain Duncan. Did you take notice of the rottenness of the mast upon inspecting its wounds on coming out of action?

A. I did not take notice of the rottenness of the mast till we were in Plymouth Sound.

Sir Hugh Palliser. I have no further questions to ask this witness; as to the discovery of the rottenness of the mast, that will be fully made appear by other testimonies that I shall call.

Captain Duncan. At what time was the foremast fished in the evening of the 27th of July?

A. It was not fished at all till we got into Plymouth Sound.

Q. At what time did you set about securing the foremast in the afternoon after the action?

A. Immediately.

Q. What work did you do to it?

A. We secured the chain plates.

D d

Q. Was

Q. Was there any work done to either of the top-masts at that time ?

A. We reefed the main top-mast, and cut the heel off, the next morning after the action.

Q. Were any other repairs done to masts, yards, or bowsprits, from the time of the action till the ship's arrival at Plymouth ?

A. We set about fishing the mizen-mast, with an anchor stock on the evening of the 27th, and completed it.

Q. What part of the ship was you on upon the evening of the 27th ?

A. On the quarter deck all the evening and night, at work fishing the mizen-mast.

Q. Had you been on the fore-castle any part of that evening ?

A. I had been upon the fore-castle to see what chain plates were shot away, and the other damages done.

Q. Did any one take notice to you of the fore-mast being rotten any time that evening ?

A. I do not remember any one did at that time.

Q. How many chain-plates were shot away, and on what side were they ?

A. Three ; and I think on the starboard side.

Q. At what time were they repaired ?

A. By next morning we finished them.

Ordered to withdraw.

Captain KINNEER, late a Lieutenant on board the *Formidable*, called in, and sworn.

Q. How near to the enemy did the *Formidable* begin to engage ?

A. Within musquet shot.

Q. How

Q. How long do you judge she was engaged?

A. About one hour and forty minutes.

Q. Do you recollect after coming out of action, that orders were given to wear after the enemy, in expectation that the Admiral was coming up to renew the engagement?

A. Yes; and the ship was wore in consequence of such orders.

Q. Did the sternmost of the enemy's ships fire at the Formidable whilst she was wearing?

A. She fired one or two shot, when she came under the Formidable's counter?

Q. After wearing were the officers and men ordered to their quarters, in expectation of going again into action?

A. Immediately.

Q. Did you observe the French fleet begin to wear while we lay with our heads towards them?

A. I think there were three ships drew out of the French fleet, and pointed towards the Formidable.

Q. Did you understand that to be the reason for orders given to wear?

A. I understood so from Capt. Bazely.

Q. After we had wore, and stood towards the French fleet, did you observe how they steered afterwards?

A. No.

Q. Did you observe that the Victory was standing towards the Formidable while she was standing towards her?

A. Yes, I did.

Q. Did the Victory and Formidable afterwards meet?

A. The Victory passed the Formidable to windward upon different tacks.

D d 2

Q. In

Q. In the situation you observed the Victory and Formidable when standing towards each other, could the signal have been seen at the Victory's mizen peak?

A. I think not.

Q. What did the Victory do after she passed the Formidable?

A. She wore under the Formidable's stern, and stood to the southward.

Q. Did you observe after that what course she steered?

A. For a short time I believe she kept her wind, and after that she kept two points from the wind.

Q. How did the Victory, steering as you have described, place the Formidable in respect to her?

A. Nearly in her wake.

Q. In half an hour after the Victory had passed us, what distance do you think we were left asunder after the Victory had wore, and passed us?

A. About half a mile.

Q. Was that within the proper distance for her station in the line?

A. Yes.

Q. Did the Victory always outfail the Formidable, or the Formidable the Victory under the same fail?

A. The Victory always outfailed the Formidable?

Q. Did the Victory ever ease her distance the whole afternoon, or how?

A. I took very little notice of the Victory after she kept a-way.

Q. But when you did take notice of her at any time, was the distance encreased?

A. She was considerably farther from the Formidable in the evening; and the time I last took notice of her than before.

Q. Did

Q. Did you at times observe how the Formidable steered with respect to the Victory?

A. Keeping the Victory in general about a point open on the lee-bow.

Q. Was that in your opinion a proper course for fetching in her station if she could have come up with the Admiral?

A. I think it was.

Q. When did you observe the Red Division form in the rear of the Victory in the afternoon of the 27th of July?

A. I do not recollect seeing them form; I saw them a-stern there afterwards.

Q. Did you take notice where the French fleet was at that time?

A. They were forming their line to leeward.

Q. Do you remember the Fox frigate coming to the Formidable in the evening.

A. I do.

Q. What distance do you esteem the Victory was from the Formidable about that time?

A. About three miles.

Q. And in what position with respect to the Victory?

A. About two or three points upon the lee-bow.

Q. Under all the circumstances, are you of opinion, that whatever signals were made, or whatever messages were sent, was it in our power to fetch up into our station in the line unless the Admiral had waited for us.

A. We could not do it unless the Admiral had waited for us.

Q. Was every effort used on board the Formidable, with the utmost dispatch to refit the ship?

A. Yes.

Q. What

Q. Was any of the Lieutenants at that time sick, and incapable of doing their duty?

A. The second Lieutenant was wounded in the action, and the fifth and sixth lieutenants both sick below.

Q. Was the boatswain killed in the action?

A. He was.

Q. Was not the want of those four officers a great distress in the course of refitting the ship?

A. Most certainly.

Q. Were all the remaining officers and men closely employed in repairing the damages till they were completed?

A. They were.

Q. Did the ship steer kindly or wild, on account of her having so very little head-sail?

A. She yawed about a good deal.

Q. If she could have got in her station in the line, was it possible to have managed her in a close line?

A. I do not think it was.

Q. Do you recollect the Fox frigate coming up to the Formidable, and the time?

A. Nearly about seven o'clock she came, to the best of my recollection.

Q. Was you in a situation to hear any part of the message delivered from her.

A. I was on the poop, but did not hear it distinctly.

Q. Do you recollect what you did hear?

A. I understood the message was for the Vice-Admiral of the Blue and his division to bear down in the Admiral's wake.

Q. Did you hear any part of the answer?

A. No, none whatever.

Q. Do you remember the signal for ships to windward to bear down in the Admiral's wake, with
several

several ships pennants of my division that were flying?

A. I do.

Q. Were those signals made before or after the Fox came and spoke to her?

A. Before, I think.

Q. What time was the fore topfail bent and set in the evening?

A. About eight o'clock the fore topfail was set, but I don't recollect when it was brought to the yard.

Q. Do you remember all hands being called to quarters, and the drum beating to arms on the morning of the 28th, and at what time?

A. About two o'clock.

Q. Did the Formidable get into the Admiral's wake, and about what time?

A. She did get into the Admiral's wake before day-light, but I cannot say as to the time.

Q. Was the Formidable's ship's company orderly, sober, and well behaved, on the morning of the 27th, in respect to carrying on their work, and in the action?

A. They were.

Q. Was any liquor given to them before the work, was over, at what time, and how much was given to them?

A. Nearly about ten o'clock each man was served half a pint of wine.

Q. Did you observe any ships near us at different times in the afternoon of the 27th, and how many?

A. I don't remember more than two, I believe the Egmont and America.

Admiral Digby. Did you see the signal for the line of battle flying on board the Formidable any time of the afternoon of the 27th?

A. I

A. I did not notice the signal being hoisted any part of the afternoon; I was on the poop, and did not notice it at all.

Captain Duncan. Where was you quartered on the day of action?

A. On the upper gun deck.

Q. After you was out of action, did you observe the *Arethusa*?

A. I do not recollect seeing her at all.

Q. Did you perceive the *Ocean* near the *Formidable* from three o'clock till dark?

A. I do not recollect seeing her at all that afternoon. I was totally taken up with the repairs of the ship.

Q. Where was you placed at that time?

A. In the after part of the ship.

Q. Did you see the Blue flag at the mizen-peak at any time in the afternoon on board the *Formidable*?

A. The Admiral ordered us to repeat the signal which was made on board the *Victory*.

Q. When you was upon the starboard tack that afternoon, was the *Formidable* at any time upon the larboard quarter of the *Victory*, to leeward of her wake?

A. Not that I observed.

Q. Do you recollect any orders given in consequence of the message delivered by the *Fox*?

A. No! I do not recollect any.

Sir Chaloner Ogle. Do you conceive a practicability of the Vice Admiral of the Blue's shifting his flag on board any other ship of his division, had that measure been thought expedient?

A. It must have been attended with the greatest difficulty if the Vice Admiral had thought it necessary.

Q. Was

Q. Was there any such manœuvre in agitation at any time during the course of that afternoon?

A. I never knew of any.

Captain Robinson. Relate what were the difficulties that might have attended the shifting the flag.

A. A general destruction of the rigging.

[The Vice Admiral Sir Hugh Palliser admits it was not intended to shift the flag.]

Q. What was the position of the Formidable in respect to the Victory at day-break?

A. When I came on deck, the Formidable was in the Victory's wake, or pretty near it.

Q. Do you know any of the ships that were nearest to you, a-head or a-stern?

A. I did not take notice of any.

Q. Was you at any time on the fore-castle in the afternoon of the 27th of July?

A. I believe I went forward, but I did not stay there.

Q. Did you hear any thing about the foremast being rotten at that time;

A. I did not, at that time.

Q. What time did the Victory come to the wind again, after wearing?

A. She did not come to the wind at all that I recollect; I did not observe her.

Q. Was it owing to the Formidable's incapacity of making sail, that she increased her distance in respect to the Victory.

A. The Formidable could not make more sail.—The Victory carried sail from us, which caused the distance to encrease.

Q. At what time did you observe this?

A. About seven o'clock, or later, I believe.

E c

Q. At

Q. At what time did you observe the red division to take her place in the rear?

A. I did not take any notice of the time, but it must have been earlier than the period fixed about the Victory.

Q. Do you understand that any answer was returned by the Formidable to the message which was delivered by the Fox?

A. Yes, I have understood so, but I did not hear it.

Q. What was the impediment of your hearing it?

A. I was on the fore part of the poop, and apprehended the Vice Admiral answered from the stern gallery.

Q. Do you know if there were any distinguishing lights burning in the night of the 27th on board the Formidable?

A. I do not know.

Q. Did you observe the Red division move from the rear of the van?

A. I recollect seeing them go a-head.

Q. Did you observe the position of the Queen in respect to the Formidable, just before that motion took place?

A. I did not observe it.

Q. Did you observe the Queen at any time with respect to the Formidable that afternoon?

A. No, I did not.

Q. Had you any watch upon deck that evening?

A. I had no regular watch. I was the day officer, the second lieutenant being wounded, I walked the quarter-deck for about an hour.

Q. Had you no time to inform yourself, whether or not they were lighted that night?

A. The top lantern was wounded; seeing that, I ordered a signal lantern to be sent up immediately.

Captain

Capt. Robinson. Did you never enquire whether the stern lights were lighted or not?

A. I might, but I cannot recollect at this distance of time, it is so long since.

Q. Did you receive any orders for not keeping lights burning that night?

A. No.

Capt. Colpoys. How soon after the action of the 27th did you hear of the foremast being rotten?

A. I cannot say how soon, but I believe it was before we got into port.

Q. Do you know any thing of the fore-topgallant-yard, or mast, being down that afternoon?

A. I don't recollect any circumstance of the kind. Captain Kinneer withdrew.

JAMES DICKENSON, second Lieutenant of the Formidable, called in and sworn.

Q. Had you the morning watch on the 27th of July last?

A. Yes, I had.

Q. Inform the Court of the situation of the Formidable, respecting the Victory, and of what happened from day-light in the morning, until the signal made for the ships of my division to chase?

A. About a quarter past four the Formidable was about a mile upon the starboard, or lee-bow of the Victory, and nearly about that distance a-head; a quarter before five the Victory let her third reefs out of her topsail, and the Formidable did the same; about half past five the signal was made for about six ships of the Blue division to chase.

Q. Did the Formidable set her mainsail at the same time when the Victory set hers?

A. Upon the Victory's setting her mainsail, we set ours immediately, as we always paid the greatest

attention to her motions, and thereby regulated our actions.

Q. Before you began to encrease sail, had you any stayfairs set, and what were they?

A. We had our main-topmast-stayfair, fore-topmast-stayfair, and mizen stayfair.

President. Did the Victory in general always outfair the Formidable?

A. She always failed much better than the Formidable by the mainfair; she often spared the Formidable her mainfair, and sometimes a stayfair besides.

Sir Hugh Palliser. I beg leave to put one question more to Captain Bazely.

Captain BAZELY was again called in.

Sir Hugh Palliser. What was the report you made to me on the afternoon of the 27th, respecting the Formidable's foremast?

A. I made the report to the Vice-Admiral, that upon examining the wound in the foremast, about six feet above the forecattle deck, that it could not be safe to put any sail thereon, and I thrust my hand through the wound, and pulled out some rotten wood. Mr. Hills, the fourth lieutenant, was with me at the time, and was witness to it.

JOHN HILLS, late fourth Lieutenant of the Formidable, called in and sworn.

Q. Where was your station for the purpose of refitting the rigging in the afternoon of the 27th, after the action?

A. Upon the forecattle.

Q. Did you then take notice of the foremast being wounded, and what observation did you make relative to it?

A. I

A. I saw several of the people looking at the fore-mast that was wounded, which led me to examine it myself. I took away several pieces from the fore-mast that were very rotten, and told Captain Bazely of it.

Q. Do you remember after the Formidable came out of action, that she was wore immediately in the rear of the enemy's line?

A. I do.

Q. Was any order or dispositions made at that time in expectation of renewing the engagement?

A. The drum beat to arms, and I was ordered to my quarters.

Q. Whilst she was laying on the larboard tack, did you observe any of the French fleet to wear, and stand towards her?

A. I saw them wear, and saw several ships point towards the Formidable; they looked up to windward of her.

Q. Did you understand that was the reason why the Formidable was ordered to wear again to stand towards the Victory and the fleet?

A. I did.

Q. Did you observe the motions of those French ships that had been pointed towards us after we wore, and how they steered?

A. I did not observe them afterwards, till they were forming in the line.

Q. Did the Victory and Formidable afterwards meet?

A. They did.

Q. Was any signal for the line seen on board the Victory from the Formidable, after they met?

A. I don't believe there was, for we were end on at that time.

Q. Did

Q. Did you see the *Arethusa* frigate before we came the length of the *Victory*?

A. I don't remember to have observed her.

Q. Whilst the *Formidable* was standing towards the *Victory*, were there any ships between them in a line a-head of the *Victory* that you noticed?

A. There were none that I saw.

Q. Did you see the signal for wearing, when the *Victory* and *Formidable* passed each other?

A. I cannot say exactly that I know, but I think the *Formidable* wore very soon after.

Q. How did the *Victory* steer after she wore, and passed the *Formidable's* wake?

A. She appeared to be going two or three points from the wind.

Q. Did she appear to you to keep her wind a little while before she went large in that way, or how?

A. She was well ranged forward on the lee-bow of the *Formidable*, before she led away so large.

Q. What was the situation of the *Formidable* in consequence of her thus edging away?

A. The *Formidable* was on her weather-quarter about two or three points.

Q. What distance was the *Formidable* from the *Victory*, at half an hour after she had passed under the *Formidable's* stern?

A. From half a mile to a mile, I should suppose.

Q. Was she then within the proper distance of her station, in the line?

A. Yes.

Q. Can you remember any particular circumstances occurring to you, that the signal for the line was flying on board the *Formidable* that afternoon?

A. Yes, I do.

Q. Name them?

A. I

A. I cannot say that I observed them, until Lieutenant Winckworth asked me, what those signals were; I replied to him, that if he would send down for my book of signals, I would certainly inform him; the book was sent for; the book was brought to me, and I pointed out to him, by that book, that it was the signal for the line of battle a-head.

Q. Did not the Victory always outfail the Formidable, under the same course of sail?

A. Yes, very much.

Q. Did you observe what course the Formidable steered that afternoon, with respect to the Victory?

A. I looked at the Victory very frequently, and saw her about a point under the Formidable's lee-bow.

Q. Did the Victory encrease her distance from the Formidable during the afternoon?

A. She did, very considerably.

Q. What was the distance encreased, between the Victory and the Formidable, at the time the Fox frigate came to the Formidable?

A. Three or four miles, I dare say.

Q. What position was the Formidable in from the Victory at that time?

A. A point or two to windward of her, more I should suppose.

Q. Was it safe to set sail upon the foremast sooner than it was done?

A. No, by no means.

Q. Was every effort, and means possible, used to refit the Formidable with the utmost dispatch?

A. I do think it was; as it was the Admiral's express orders, and every body was ready and expert in obeying those orders.

Q. Do you remember the Fox coming to the Formidable, and at what time?

A. I

A. I remember it perfectly well, and I think it was near, or about sun set.

Q. Do you remember the signal being repeated on board the *Formidable* for several ships of the Blue division to bear down ?

A. I remember the signals being flying on board the *Formidable* ?

Q. Was that before or after the *Fox* spoke to the *Formidable* ?

A. It was before.

Q. At what time was the *Formidable*'s fore topsail bent, and set ?

A. About eight o'clock.

Q. Were the hands on board the *Formidable* called to quarters, and did the drum beat to arms before day light on the morning of the 28th, and at what time ?

A. The drum beat to arms before day light.

Q. Did the *Formidable* get into the Admiral's wake before day light that morning, and at what time ?

A. She was in the *Victory*'s wake at day light; but what time she got there I know not.

Q. Did you observe any ships on the afternoon of the 27th near the *Formidable*, and how many ?

A. I do not remember remarking any ships in particular being near the *Formidable*.

Sir Hugh Palliser. I have no more questions to ask this witness.

Friday, April 30.

Lieutenant HILL called into Court again.

Cross-examined by the Court.

Q. Where was you quartered in the morning of the 27th of July ?

A. On

A. On the lower deck.

Q. Where was you stationed in seeing the repairs done?

A. On the fore-castle.

Q. Was you there most of the afternoon?

A. The greatest part thereof I was.

Q. What sail had you set most of the afternoon?

A. Fore-sail very much tore, as well as main-sail, main top-sail, and mizen top-sail; fore top-sail shot away.

Q. You said you saw the signal for the line flying on board the Formidable? was it from the Formidable's fore-castle you saw it?

A. Yes, before the main-sail was set.

Q. How long was you on the starboard tack before your main-sail was set?

A. A quarter of an hour I should suppose, or near half an hour.

Q. Was the signal made with a gun, or without one?

A. I cannot say. I do not recollect it. I did not see it till it was pointed out to me by Lieutenant Winckworth.

Q. Did you observe the Ocean, or any other ships near the Formidable that afternoon?

A. I did not see any ship near the Formidable that afternoon.

Q. Did you observe any ships near you bear down, when the signals were made for particular ships to bear down into the Admiral's wake?

A. I did not.

Q. Was the signal of the line hauled down in order to repeat the signal the plainer?

A. I believe it was not.

Q. When was the signal for the line hauled down on board the Formidable that afternoon?

F f

A. I

A. I cannot tell.

Q. Did you see it flying at the close of the evening?

A. I was ordered on the lower deck to complete the quarters in lieu of such men as were killed and wounded.

Q. Do you know whether Sir Hugh Palliser gave orders to haul the signal of the line down?

A. I do not.

Q. Did the Formidable carry her distinguishing lights that night?

A. I cannot say, I was too particularly employed to attend to them.

Q. Had you no watch?

A. All hands were up all night?

Q. Did you take notice of the Queen that night?

A. I saw the Queen form in the Victory's wake in the afternoon.

Q. What was her situation in respect to the Formidable, when you then saw her?

A. A mile rather on our beam.

Q. About what time was this?

A. Between four and five o'clock, by the appearance of the sun.

Q. Do you recollect what progress you had made in your repairs between five and six?

A. I cannot tell, but am very sure no time was lost.

Q. How did the Victory bear, at the time you mention the bearing of the Queen?

A. I did not attend to that; and therefore cannot say.

Q. Did you look on the Formidable as a well manned ship?

A. No; not particularly so; she was manned as other ships are in general.

Q. At

Q. At what time in the evening did you quit the fore-castle, and go below?

A. Soon after the Formidable.

Court. Give an account of what you heard pass between the Fox, joining the Formidable?

A. I was not in a situation to hear any message; I was stationed on the fore-castle.

Q. Do you know any person on board the Formidable that did hear the message?

A. I do not.

Q. Were your men alert and obedient?

A. They were very much so.

Q. Was every endeavour used to get your rigging repaired?

A. Every endeavour was used, and that with the greatest expedition.

Q. Did you observe the position of the other two divisions in respect to the Formidable just before you left the fore-castle?

A. I should suppose we were at least three points upon the Victory's weather quarter; I did not observe the position of Sir Robert Harland's division, but I believe they were a-head of the Victory.

Q. Was the fore top-sail set at the time when you made these observations?

A. I left them in the operation of setting it; and when I came upon deck in half an hour after, it was then set.

Q. What hour was it?

A. About eight o'clock.

Lieutenant JACOB WALLER of the Formidable called in, and sworn.

Q. Do you remember the Fox coming to the Formidable on the evening of the 27th?

A. Yes.

Q. Do you remember a number of ships pennants being let fly on board the Formidable that evening?

A. Yes, I remember there were many, perfectly well; but for what ships I cannot say.

Q. Were those pennants flying before the Fox came to the Formidable?

A. Yes, they were.

Q. Do you remember any circumstance concerning the distinguishing lights that night, if you do relate them?

A. They were re-lighted as usual, and the man in the top complained he could not keep the lights in, because the lantern was shot; he was told to remedy it as well as he could. A lantern was sent up, and the candles were again lighted, and I think they continued so.

Q. Do you remember our going in the morning before day-light into the Admiral's wake? if you recollect any particular circumstance that occurred to you relate it?

A. I remember the Vice-Admiral ordered the main-sail to be hauled up, that we might go and take our station; about two o'clock the main-sail was hauled up, and we put the helm up, in order to take our station; the master was then upon deck, and under an apprehension that the Victory's lights were the French Admiral; which opinion I mentioned to the Vice-Admiral, who desired the ship to be brought to the wind again; at the same time the Vice-Admiral took his glass, went over to the leeward, and was satisfied they were the Victory's lights: the helm was put up, and we took our stations as near as we could judge. The reason why we thought those lights were the French Admiral's, was, before we bore up, we saw distinguishing lights just before our starboard bow, which proved to be the Vice-Admiral of the Red's; the distance might be about five or six miles.

Q. Did

Q. Did the Formidable at any time shoot a-head of the Victory before we went into her wake?

A. I went off the deck soon after eleven o'clock; left the Victory then under our lee-bow; came up again about one, and found her much in the same situation with respect to the Formidable.

Cross-examined by the Court.

Q. At what time did the Fox come to the Formidable in the afternoon of the 27th?

A. It was very near sun-set.

Q. What passed between the Fox and Formidable?

A. There was a message brought, and an answer given; but what it was, my situation was such, that I could not hear; I was then on the larboard gangway, and therefore could not hear distinctly either message or answer.

Q. Did you see the signal for the line of battle flying on board the Formidable on the afternoon of the 27th?

A. I remember when I saw the pennants flying, there was a signal or signals at the mizen peak, but what they were I did not enquire.

Q. Where was you stationed, in refitting the ship that afternoon?

A. At the main rigging.

Q. What time was the mainsail set, when you was on the starboard tack; and what situation was the Formidable in at the time the Victory passed you?

A. I cannot say the time when the mainsail was set; but as soon as the rigging, which had been shot away, was spliced, the mainsail was set; we were in the Victory's wake, not much more than half a mile a-stern; she might have passed us half an hour.

Q. Do you recollect any reason assigned why the fore topsail was not set sooner in the evening?

A. I

A. I must observe that I was stationed at the main rigging, and could see that the rigging forward was shot away, that the foremast was much wounded, and not fit to carry sail upon until it was properly secured.

Q. Was you on deck at day light on the morning of the 28th.

A. Yes, I was.

Q. What ships were near you at that time ?

A. I cannot recollect.

Q. Did you plainly see the Victory ?

A. Yes.

Q. What situation was she then in, in regard to the Formidable ?

A. We were in our station, of course, the Victory was nearly a-head of us.

Q. Did you set your mainsail again after hauling it up in the morning ?

A. I do not recollect that we did ; as we were in our station it was not necessary.

Q. Was Captain Bazely upon the quarter deck when you was ; there was a doubt about the Victory's lights ?

A. I don't recollect he was just at that time, but in general he was always upon deck while I was there.

Q. Did you yourself, at that time, see the distinguishing lights burning on in the Formidable's top ?

A. I do not recollect that I did ; our lights in general were so well attended to, that I did not think it necessary : we were going down into our station, and that engaged my attention.

Q. Where was you quartered at the time of action ?

A. On the lower gun deck.

Q. Did you ever enquire about the stern lights when you was upon deck ?

A. I don't remember I did ; I suppose they were burning as usual.

Q. Do

Q. Do you recollect any thing of a gun being fired as a signal at any time in the afternoon after coming out of action?

A. I do not recollect.

Q. After the Formidable got into her station in the line on the morning of the 28th, what sail did she keep abroad?

A. I don't recollect any alteration being made.

Q. What sail had she set?

A. Top-sails and fore-sail, to the best of my recollection: I don't recollect any thing about the reefs.

Q. Was the mizen top-sail handed, as is customary for flag ships to do?

A. We generally used to practice it, but I can't speak to it on that particular night.

Q. Was the mizen set when you saw the signal or signals for particular ships?

A. I cannot charge my memory.

Q. Did you see any general signals flying on board the Victory at sun set on the 27th?

A. No; I did not attend to any signals on board the Victory; I do not remember that I did.

Q. After the Victory passed you on the starboard tack, in what manner was the Formidable cunn'd that afternoon?

A. We kept the Victory a point; or a point and a half under the lee-bow.

Q. Did you at that time go from the wind?

A. Yes. A point, or a point and a half, I should suppose.

Q. Did you observe the Vice-Admiral of the Red, when he was in the rear of the fleet, any time the afternoon of the 27th?

A. I remember his forming in the rear of the Admiral; but I cannot speak to the time.

Q. How

Q. How was the *Queen* then situated in respect to the *Formidable*?

A. Rather before the *Formidable*'s beam, near a mile or a mile and a half distant.

Q. Did you consider the *Formidable* to be well manned?

A. We were tolerably so; but nothing remarkable?

ROBERT HAVEN, Gunner of the *Formidable*, called in and sworn.

Q. Have you got your expence book for the month of July last?

A. I have.

He produced it.

Q. Does it appear that a signal gun was fired on board the *Formidable* after the action of the 27th? and read it.

A. Twenty-seventh July, 1778, fired for signal of line of battle a-head, twelve pounders one, cartridge one, powder six-pounds.

Q. Is that your own hand-writing?

A. Yes.

Q. When was the enquiry first made of you, to know whether there was any entry in your expence book of such gun being fired?

A. Last Saturday morning.

Q. Does it appear by your book that it was the last gun fired on that day?

A. Yes.

Sir Hugh Palliser. I have no more questions to ask the Gunner.

Admiral Digby. Do you recollect that gun being fired?

A. My Mate is here who fired the gun, and can speak to that.

Sir

Sir Chaloner Ogle. Do you know that the line of battle was flying at any time that day on board the Formidable ?

A. I do.

Q. What were the flags you saw ?

A. I think I saw a blue striped flag, but I cannot positively say what flag. I asked a Midshipman, who told me it was a signal for the line of battle.

Q. Were there more flags than one flying at the mizen-peak, at the time you speak to, and what time was that ?

A. Between two and three in the afternoon ; I cannot remember whether there was more than one, as it was not a duty of mine.

Q. Is all this book of your own hand writing ?

A. Yes, except Captain Bazeley's signature.

Q. How long is it since this book was copied from your rough scroll ?

A. Since August last.

Q. Has it been constantly in your possession since ?

A. Yes ; except when the Captain's Clerk copied it for the Captain's use.

Withdrew.

WILLIAM ADAMS, Gunner's Mate, called in and sworn.

Sir Hugh Palliser. Do you remember a signal gun being fired in the afternoon, after the engagement, and if you remember any thing particular relating thereto, give an account of it.

A. It was fired in the afternoon presently after the engagement ; I fired it myself, and the shot was not drawn ; it was round and double head.

Q. Was there any other signal gun fired that afternoon ?

A. No.

G g

Q. What

Q. What gun was it that you fired ?

A. The sixth gun on the larboard side.

Q. On what occasion was that gun fired

A. I do not know, only that it was a signal gun.

Q. How came you to know that the round head and double shot was in the gun ?

A. They were all shotted before we came in the action on that side ; I saw them all shotted myself.

Q. Was it the weather or lee-side at that time ?

A. The weather-side. To the best of my knowledge we had the larboard tacks on board.

Sir WILLIAM BURNABY called in again.

Sir Hugh Palliser. After you delivered your message to the Queen did you take notice of the *Vengeance* ?

A. I did.

Q. Was she left a distance a-stern, and did she appear to you to be left in a distressed state ?

A. Yes, she was between two and three miles a-stern of the *Victory*, nearly in the Admiral's wake, and seemed to lay in a very disabled state.

Q. Do you remember your coming on board of me the day after the action, with a message from the Admiral ; and if so what was it ?

A. I remember my signal was made to come on board the *Victory*, soon after day-light, and then to be ordered by Admiral Keppel to go on board the *Formidable* " with his compliments to Sir Hugh Palliser, and desired to know how he was ? and begged a return of the state and condition of his ship."

Q. Do you remember returning to Admiral Keppel with a letter from me ? Did you deliver this letter yourself, and what conversation passed between you and the Admiral on that occasion ?

A. I

A. I remember to have returned from the *Formidable* in about a quarter of an hour with a letter from Sir Hugh Palliser to Admiral Keppel, which I presented myself to the Admiral, who was then, I think in the cot: after he had read the letter, he delivered it to Admiral Campbell, who was at the same time in the cabin, saying, as nearly as I can recollect, "Here, Campbell! look at that letter! Sir Hugh seems to have suffered more than any in the action!"—I continued a few minutes after in the cabin; Admiral Keppel having no further commands for me, I withdrew and returned on board the *Milford*.

Examined by the Court.

Captain Duncan. Upon what tack was the fleet at that time, when you went with the message, and were they under sail, or laying too?

A. As well as I recollect at this time, they were laying too on the larboard tack, with their heads to the northward.

Q. Where was the *Formidable* situated in regard to the *Victory* at that time?

A. I do not this moment recollect her position.

Q. What hour was it that you say you saw the *Vengeance* lay in a disabled state?

A. Between five and six o'clock.

Q. Do you recollect seeing any of the three deck ships a-stern of the *Victory* at that time; how many, and do you know their names?

A. When I delivered the message to Sir Robert Harland, the *Queen* was then a-stern of the *Victory*, and nearly in her wake, with some others of his division, but I went a-stern of them all, except the *Vengeance*.

Q. Did you take notice of the Vice-Admiral of the Blue when you was going a-stern, and what number

Lieut. Beard.]

(232)

ber of ships had he with him, and how far distant to windward?

A. Soon after I passed Sir Robert Harland and the ships that were a-stern, I think I recollect to have seen the Formidable a good way a-stern and pretty well to windward.

Q. What distance might the Queen be a-stern of the Victory when you delivered the message?

A. I don't recollect.

Withdrew.

Lieutenant JOHN BEARD, late of the America, called in, and sworn.

Q. Do you remember taking notice of a frigate coming to the Formidable, and about what time, on the evening of the 27th of July?

A. Yes; I remember a frigate coming under the Formidable's stern about the close of the evening; but I cannot recollect the exact time.

Q. Do you recollect noticing the signal for the line flying on board the Formidable at any time that afternoon?

A. I cannot speak with any certainty to the signals. I saw many signals flying on board the Formidable in the evening; I am certain to pennants for particular ships to bear down into the Victory's wake.

Examined by the Court.

Admiral Digby. Do you know if the frigate you saw come under the Formidable's stern was the Fox?

A. I was told at that time that it was the Fox, and from circumstances that appeared afterwards, it could have been no other.

Q. What time was it?

A. Towards the close of the evening.

Q. Was

Q. Was it before, or after sun-set?

A. Before sun-set.

Q. What distance might you then have been from the Formidable?

A. About half a mile a-stern.

Q. How did the Victory bear then?

A. About three miles on our bow.

Q. Did you see any pennants flying on board the Formidable before, or after the Fox came under her stern?

A. I cannot say.

Q. Was the signal for the line on board the Formidable noticed on board the America?

A. Yes; I heard several say they saw it flying on board the Formidable; I think the master.

Q. Did you observe the Ocean that evening?

A. Yes; she was a-head of us upon the Formidable's lee quarter, and upon our lee bow.

Q. When the Ocean bore away from the Formidable, to form in her station, in the line, did you see her?

A. Yes; I saw her, in obedience to her particular signal, right before the America; we followed her.

Q. How large did she go?

A. I think almost before the wind.

Q. How far did she run down, before she got into her station?

A. I do not think it could exceed a mile, or a little more.

Q. Was you in your station, in the line, before dark?

A. Just as we got into our station, in the Victory's wake, it was then dark.

Q. Did the Ocean get into her station at that time?

A. She had got in her station before us.

Q. When

Q. When you got in your station, was you farther a-stern than you should have been in the line of battle?

A. I think not; we were nearly in our station.

Q. Where was the America stationed in the line of battle?

A. A-stern of the Ocean?

Q. Did you esteem yourself farther from the Victory when you got in your station, than you should have been, respecting the other ships between you and the Victory?

A. I can only speak with respect to the Ocean, as it was then dark.

Q. Can you speak with regard to your distance from the Victory?

A. No, I cannot; but I saw her lights.

Q. When you bore away to take your station in the line, did you leave any ships with the Formidable?

A. None; there were some disabled to windward, and I believe the Ramillies was one that was most disabled.

Q. Did you see the Victory's lights all night?

A. I saw them at eight o'clock, but was not on deck again till four o'clock in the morning.

Q. Did you see the Formidable at day-light in the morning?

A. Yes; we saw all the ships.

Q. In what situation were the three flags at that time?

A. They appeared to be in a line.

Q. Do you recollect seeing the Vengeance any time on the afternoon of the 27th?

A. Whilst we were standing on the starboard tack in the afternoon, there was a ship a great way a-stern of us, which I was told was the Vengeance.

Q. How

Q. How far was she a-stern about six o'clock from the sternmost ship in the Victory's wake?

A. I cannot say; but we were in pain for her, as she appeared to be nearer to the French fleet than any of ours.

Withdrew.

RICHARD SEARLE, Master of the America,
called in, and sworn.

Q. Do you remember seeing a frigate coming under the Formidable's stern on the evening of the 27th of July, and what time it was?

A. I saw a frigate come under her stern towards the close of the evening, a little before sun-set.

Q. Do you remember seeing the signal for the line of battle on board the Victory and Formidable that afternoon?

A. I remember seeing a blue flag at the mizen peak of the Victory and Formidable, before the blue flag was hoisted, but cannot say what signal it was.

Q. Do you remember seeing the Formidable's lights that night?

A. I saw them frequently.

Examined by the Court.

Q. Describe the lights you saw?

A. I saw the stern light frequently. I cannot be positive as to the top light.

Q. At what time of the evening did you first see it?

A. Just at dark, and from that time till eleven o'clock.

Q. Was you in the line, when you saw the lights?

A. Yes.

Q. Did

Q. Did the Formidable's lights appear to be in the line at that time?

A. No; upon the weather bow.

Q. Was the flag you saw upon the mizen peak of the Formidable hauled down, or continued flying after the blue flag was hoisted?

A. I cannot say whether it was continued flying after the blue flag was hoisted, I rather think it was hauled down; but I cannot speak positively at this distance of time.

Q. Was the signal you saw considered on board the America as the signal of the line?

A. I believe it was by every body.

Q. Do you remember the time in the evening when you bore down in the Victory's wake, and what hour was it?

A. It was a little before sun-set; we attempted to bear down twice, but the ships were so thick to leeward, that we were obliged to bring to. It was near sun-set when we got into our station.

Q. Were the ships so thick to leeward that you could not get into your station?

A. Not without our waiting to give them an opportunity to shoot on.

Q. Are we to understand by that you must have brought the wind upon the larboard quarter to get on your station?

A. No; I don't imagine that was necessary, the wind was always upon our starboard quarter, there was some ship in the way prevented our getting into our station.

Q. How large did you steer when you bore away to get into your station, and what distance do you think you run?

A. I believe we brought the wind about four points on the quarter; and suppose we ran down at different times about a mile.

Q. Do

Q. Do you recollect what division those ships were of which caused the impediment to your going down?

A. I don't recollect what division they were of, I only took notice of the Ocean which was the ship we were to follow.

Q. The first time you attempted to bear down, where was the Vice-Admiral of the Red division?

A. A-head of the Admiral I believe.

Q. How far a-stern of the Formidable was you when you bore away to get into your station?

A. Not far; about half or 3-4ths of a mile.

Q. Did you see the signal of the line flying on board the Victory in the evening at the mizen peak?

A. I saw a flag flying, but cannot say what flag it was.

Q. How early was it in the evening that you understood that the signal of the line was flying on board the Formidable?

A. I believe it was about six o'clock in the evening.

Q. Did you take notice of the Formidable before dark?

A. Yes, I did.

Q. What was her situation in regard to the America?

A. We were on the Formidable's lee-quarter.

Q. Was you upon deck at break of day on the morning of the 28th?

A. Yes, and an hour before day-light, and continued there all the morning.

Q. Did you see the Formidable at any time after you came upon deck in the morning?

A. Not early in the morning; I don't recollect noticing it.

Q. How soon do you recollect to have taken notice of her?

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A. I

A. I cannot say, 'tis so long since; it might be seven or eight o'clock.

Q. When you got into your station in the line, was you the sternmost ship?

A. No; there might have been two or three ships a-stern of us.

Q. Were they at any great distance from you?

A. No; not any great distance.

Q. What ship, reckoning from the van ship of the enemy, was the *America* opposed to in the line, when she first got in her station?

A. I believe the fourth or fifth ship was upon our beam, or thereabouts, about a mile, or a mile and a quarter to leeward.

Withdrew.

Lieutenant JOHN INGLEFIELD, late of the *Robuste*, called in, and sworn.

Q. In what situation was the *Robuste* with respect to the Vice-Admiral of the Red, at day-break on the morning of the 28th of July?

A. She was at that time about two or three cable's length upon the Vice-Admiral of the Red's weather quarter.

Q. As the day came on, what ships did you see near to you, and describe their situation from you?

A. I saw most of the ships of the Vice-Admiral of the Red's division near the *Robuste*; the *Berwick* I thought very near on our lee quarter.

Q. When you first saw the *Formidable* after that time, in what situation was she?

A. When I first saw her, she was three or four miles distant from the *Robuste*: at the time I first mentioned it was just then dawn of day;—I went at that time upon

upon the Robuste's poop to look for the Formidable, but could not at that time see her.

Admiral Digby. How long after that did you see the Formidable?

A. As soon as I had day-light sufficient to see the distance of three or four miles.

Sir Hugh Palliser. What situation was the Formidable in at the time you did first see her?

A. She was in the rear of the fleet, I only saw her flag, as there were many ships between her and the Robuste.

Q. Did she appear a-stern of the Admiral at that time?

A. She did.

Q. Did the Robuste wear or tack, in order to join the Formidable?

A. When it was perceived that the Robuste was at such a distance from the Formidable, the main-sail was hauled up, the mizen top-sail was laid aback, to give room for the Robuste to be wore, the ship on her lee quarter being in her way; but as soon as she was a-stern of that ship, the Robuste wore.

Examined by the Court.

Q. Do you know what ship that was?

A. I said before I believed it was the Berwick.

Q. Did you take notice of the Stirling Castle at that time?

A. I did not; there were other ships of the Red division about the Berwick; so that I did not take particular notice of her.

Q. After you wore, did you run to join the Formidable immediately?

A. We did.

Q. What distance do you suppose you run to join the Formidable?

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A. I

Mr. Brand.] (240)

A. I said before, that the distance was about three or four miles.

Q. Were your colours flying at day-light ?

A. Yes, both ensign and jack.

Q. Was there any thing at your fore top gallant mast head that might appear like a flag ?

A. It was shot away in the action.

Withdrew.

JOHN BRAND, who attended the lights on board the Formidable, called in, and sworn.

Q. Do you remember being employed to light the lantern light in the top the night after the action ?

A. I do.

Q. Relate what you remember about it, and if you had any difficulties in making it burn ?

A. The top-light, as usual, was sent up in a lantern, as a signal lantern, because the top-lantern, was wounded, and we tied a piece of canvas round it to make the light burn. I slept in the top till about half after eleven, when it was still burning ; I slept again till dawn of day, when I awoke the light was out ; whether it burnt out of its own accord, or ordered to be put out, I can't say.

THOMAS CONSTABLE, one of the Top-Men, called in, and sworn.

Q. Do you remember whether there was a light in the poop lantern the night after the engagement ?

A. Yes.

Q. How do you know there was a light there ?

A. I had the charge of it.

Q. What did you do ?

A. I took care to snuff it.

Q. How

Q. How long had you the care of it?

A. Two hours.

Q. Did you leave it burning?

A. Yes.

Court. What were the hours you had the charge of it?

A. Between twelve and two.

Q. Was it burning when you took charge of it?

A. Yes.

Q. Did the light ever go out while you had charge of it?

A. No.

Withdrew.

THOMAS READ, late Master of the Queen, called in, and sworn.

Q. Is this log-book you have now delivered the same identical one you delivered into Court upon the late trial?

A. It is not.

Q. Where is the one that was then delivered in?

A. It was delivered to my agent to pass my accounts, when I was removed from the Queen, and here is his letter acknowledging the receipt of it.

The Letter produced and read,

Signed,

Creed.

Q. Whose log-book is this?

A. The log-book I found in her when I was appointed to the Queen.

Q. Who kept it?

A. I kept it from July, the remarks on the 27th and 28th of July I kept myself, they are my own.

Q. Is this the proper ship's log-book, or was that the proper ship's log-book you produced before?

A. This

A. This is the proper ship's log-book, the other was my own.

Q. Is this an exact copy of the one you produced before ?

A. There is some difference in the marking of the afternoon of the 27th in this book that was not in the former.

Q. What are those differences ?

A. They are, in my own private book ; there are no knots marked from twelve to four, nor the different courses we steered ; and the hauling down the signal for engaging was mentioned in my own, but is not in this : these are the differences.

Q. Was that omission of marking the book divided between one and five o'clock, so that the blank continued from half an hour past one to half an hour after four ?

A. I cannot now exactly recollect.

Q. When were the rates of going that appear now marked in this book entered therein ?

A. On the 28th, that afternoon.

Q. How came they to be omitted in the log-book you produced at the former court-martial.

A. Because I did not think any material consequence depended upon the reckoning ; I could not trust to the run, it was so various.

Q. Was not you asked at the other Court-Martial, whether you was sure there was nothing marked for those hours in the original ship's log-book, and what was your answer at that time ?

A. I recollect the question was asked, if I did not recollect of any knots marked.—My answer was, there is not, I have seen it ?

Q. I observed that your remarks of going two knots uniformly, is always when you was on the larboard tack

tack standing towards the enemy ; had you not all your sails set, courses and topgallant-sails ?

A. As soon as we had tacked to double upon the enemy, we did set our topgallant-sails and every thing.

There is an observation in the log-book which I will read, and ask him a question upon ;—[Reads]—

“ Tacked about half past noon, being about a mile
“ past the enemy’s rear with intention of gaining
“ the wind of them ; carried a pressing sail to double
“ upon the rear as they were then close attacked by
“ Vice-Admiral Palliser’s division, several of which
“ were disabled.”

Q. Was that remark of your own entry and your own making ?

A. Entirely my own.

Q. In consequence of that observation, did you take particular notice of the Formidable being so engaged ?

A. I observed particularly as she came out of the smoke, that she was one of the ships which was much shattered.

Q. Was the condition of the Formidable and the other ships you spoke of in your log-book very apparent ?

A. I think it was from the appearance of their sails and some of their yards being down.

Q. Did you take notice of the Formidable immediately after she got clear of the enemy, and that she laid her head towards them again ?

A. My attention was so much engaged on our ship, that I did not see her till we were afterwards on the starboard tack.

Q. Was the log-book usually communicated to Sir Robert Harland ?

A. My log-book was always—whenever he chose to see it.

Q. Was

Q. Was the same remark in your own log-book as it is entered in this?

A. Exactly, as near as I can recollect the same.

Q. Did Sir Robert Harland approve of your log-book when you shewed it to him?

A. He never signified any disapprobation to me when it was shewn him.

Q. Do you recollect having any conversation with him on any part of that day's work?

A. On the 28th after the action between nine and ten o'clock, I shewed him on a rough piece of paper the remark of that day's transactions, which he approved of all, except time, in which he said, he thought I had been very incorrect.

Q. Do you remember the Admiral or Captain with yourself making any observations of me, or the ships of my division?

A. I cannot recollect any thing that either desired me to make any remark about it, they are all my own.

Q. In the afternoon, when you bore down to form, in the rear of the Victory, did not you sail large, and what sail were you under.

A. We wore under the foresail and topsails, to the best of my memory. We did not go large to signify—we were directly in our station a-stern, as soon as we wore.

Cross-Examined.

Q. When the Formidable came out of action, how was she situated with respect to the Queen?

A. The Queen passed her very soon after she came out of action, and to windward of her.

Q. At what distance?

A. About a mile, I think.

Q. How

Q. How was the Victory at that time situated with regard to the Queen.

A. She appeared almost a-stern of her—I cannot now recollect her distance, it is so long since.

Q. While you were passing from the rear to the van, do you recollect what distance you were from the Victory and the Formidable?

A. In passing the Victory we were about half a mile to windward of her; the Formidable was then to windward of us; her distance I cannot recollect.

Q. Was you upon deck at day-break the morning of the 28th?

A. Not till the signal was made to form the line.

Q. What was the situation of the Queen at that time, in respect to the Victory and the Formidable?

A. I cannot recollect the distance of the Formidable; I did not see her; we were about one mile and a half a-head of the Victory.

Q. Did you take notice of the Stirling Castle that morning, and how was she situated in respect to the Queen?

A. I did not see her.

Q. What time did the Red division get into their station a-head of the Admiral in the evening of the 27th?

A. It was between seven and eight before we, or all the ships, got into their stations, as near as I can recollect, we had such a long way to run.

Q. Just before you moved from the rear to the van, how was the Formidable situated from you, and at what distance?

A. About three or four points broad on our weather bow; I cannot recollect the distance.

Q. Did you take notice of the Victory at that time?

A. I saw her frequently.

I i

Q. How

Q. How far was you from the Victory at that time?

A. About two miles, according to the line of battle.

Q. Can you inform the Court about what time any general signals were made on board the Queen, from the time she was on the starboard tack that afternoon?

A. As to time I can't be exact; the first signal, after wearing, I remember was to form the line a-head, at a cable's length asunder; soon after that, a frigate, the Proserpine I think, hailed us, to form a close line a-stern of the Victory, and call down ships into her wake; which signal was continued till a second frigate, the Milford, hailed us; then we had Admiral Keppel's orders to lead the flat a-head, and at that time the signal was continued flying for the line of battle; I cannot recollect any other general signals.

Q. At what time did you receive the orders to go a-head?

A. About five o'clock, as near as I can recollect.

Q. Did you, as you passed the Formidable, take notice of any signals then flying on board her?

A. I did.

Q. Did you ever look at her with a glass?

A. No, I do not recollect that I did.

Q. At the time you saw the Formidable come out of action, was the Queen lying too, or under way?

A. I have already said she had her topgallant sails set, doubling on the rear of the enemy.

Sir Hugh Palliser. It appears in the log-book, which says, "At eight o'clock in making sail thro' the fleet to get a-head, observed a great part of the ships disabled in their masts and rigging." How long

long was it after that time that the Queen got a-head into her station?

A. I cannot say as to time; it might be about eight o'clock, or very soon after.

Q. When you edged away with the Victory, in the afternoon, at what time in the evening did you haul your wind?

A. After our divisions had got into their stations, a little after eight o'clock, we shortened sail to get into our station; we went large till we were in our station, which was a little after eight o'clock. I have said all along I could not positively speak as to time.

Saturday, May 1.

ROBERT HOGGART, a midshipman of the Formidable, called in an sworn.

Sir Hugh Palliser. Give an account what signals were repeated on board the Formidable after the Victory passed to leeward of the Formidable on the afternoon of the 27th, beginning with the first of them?

A. Immediately after the Victory passed to leeward of the Formidable the signal for the line was repeated; it was kept up some time, and then hauled down; the Blue flag was hoisted alone at the mizen peak; when that was hauled down, the signal for the line was hoisted again, afterwards the the Blue flag was hoisted underneath the signal of the line; and different ships pennants thrown out before the Fox hailed the Formidable.

Q. Were the signal for the line, and the Blue flag under it kept up till night?

A. Yes.

Examined by the Court.

Q. Did you keep any minutes of those signals yourself that day ?

A. I kept minutes of signals before the action, but none that day.

Q. Can you speak to the time those signals were made and kept ?

A. I cannot say I can charge my memory with the time.

Q. Was the signal for the line immediately hoisted when the Blue flag was hauled down ?

A. Yes, it was.

Q. Was there any time in the afternoon when those signals were not flying ?

A. No, I can't say there was.

Q. Did you see all these signals you have mentioned flying yourself ?

A. Yes, I did.

Q. Were they made with guns or without ?

A. The signal for the line was made with a gun.

Q. Was the signal for bearing down made with a gun ?

A. I don't recollect.

Q. You was appointed to observe signals made on board the Victory and to repeat them ?

A. I was.

Q. Did you see the Arethusa while the Formidable was upon the larboard tack immediately after she came out of action ?

A. I cannot say I did.

Q. What is the signal for the line of battle ?

A. Union at the mizen peak ; a Blue flag with a red cross underneath it.

Q. Did you repeat the signals, having seen them fly on board the Victory ?

A. Yes.

Q. Did

Q. Did you do it of yourself, or by any particular persons orders, and by whom?

A. By order of the Vice-Admiral.

Q. Did you see the *Arethusa* at any time in the afternoon, and about what time?

A. I did see her, but I can't recollect the time, it was towards the evening.

Q. What signals had she flying at that time?

A. The signal for the line to the best of my knowledge; I can't recollect whether she had any other.

Q. Was you stationed on the poop that afternoon?

A. I was going backwards and forwards between the poop and quarter deck; I was not stationed in any particular place.

Q. Where was you at the time the *Fox* hailed the *Formidable*?

A. Upon the quarter deck.

Q. Did you hear the message that was delivered by the *Fox*?

A. No.

Q. Did you hear the answer that was returned?

A. No.

Q. Do you know what time the *Fox* came down to the *Formidable*?

A. I cannot speak as to time.

Q. Had you any watch that night, or was you upon deck?

A. I was upon deck all night.

Q. Did you see the *Victory's* lights that night?

A. I do not recollect whether I did or not.

Q. Were the *Formidable's* lights burning that night?

A. I can't charge my memory about the lights; to the best of my recollection the poop light was burning.

Q. How long was it after you first saw the signal of the line on board the *Victory* that you made it on board the *Formidable*?

A. To

A. To the best of my remembrance it was repeated directly.

Q. How came you to leave off taking notes of the signals immediately after the action?

A. I can't say for any particular reason.

Q. Are you certain you took no notes after the action?

A. Yes; we took them after the action, but not that day.

Q. When the Fox spoke to you, how did the Victory bear from the Formidable?

A. The Victory was about two points upon our lee bow; I can't speak to the distance.

Q. What ships were a-stern of you at that time?

A. There were some; but I can't say how many.

Q. How near was the sternmost ship from you?

A. I can't say to the distance; it was not great.

Q. Was there a three deck ship a-stern of you?

A. I don't recollect.

Mr. DANIEL GUERRIN, a Midshipman of the Formidable, called in and sworn.

Sir Hugh Palliser. Do you remember the Fox coming under the Formidable's stern, and about what time.

A. I remember the Fox coming under the Formidable's stern near sun-set.

Q. What message did you hear delivered from the Fox; what words do you remember to have heard?

A. I heard Captain Windfor say, that Admiral Keppel desired that Sir Hugh Palliser's division would bear down into his wake.

Q. Did you hear any other words?

A. No, I could not hear any other words for the people's cheering on board the Fox.

Q. What answer did you hear me make to the Fox?

A. I

A. I heard you answer, " Very well ; very well ; that you had made the signal for that purpose."

Q. Where was you when this passed ?

A. Close to Sir Hugh Palliser in the upper stern gallery.

Q. You are sure it was the upper stern gallery ?

A. Yes, I am sure.

Q. Do you remember handing up a Blue flag from the quarter deck to be hoisted under the signal for the line ?

A. I did not hand it up, it was already on the poop, but I ordered Mr. Hoggart to hoist it under the signal for the line, and he did it immediately in my presence.

Q. Was there a number of ships pennants let fly about the time you are speaking of, or was it before or after the Fox spoke to us ?

A. I remember several pennants flying before the Fox spoke to us.

Examined by the Court.

Q. Was the Blue flag flying at the same time at the mizen peak with the pennants ?

A. The Blue flag was flying at the mizen peak with the pennants before the Fox joined us.

Q. Where was you stationed at that time ?

A. On the quarter deck.

Q. Had you any particular employment ?

A. I was ordered by the Vice-Admiral to do my utmost endeavours in getting the rigging repaired after the action.

Q. You was not stationed to observe signals, was you ?

A. Yes, I was.

Q. Did you take any note of the signals the day of the action ?

A. I did in the morning before the action, but none after the action began.

Q. Was the message delivered from the Fox by
one

one person alone, and was it repeated by one person alone ?

A. It was delivered by one person alone ; I did not hear it repeated by a second person.

Withdrew.

WILLIAM RHODES, Captain's Clerk of the *Formidable* called in and sworn.

Sir Hugh Palliser. Do you remember seeing the *Fox* come under the *Formidable's* stern, the evening of the 27th of July, and at what time was it ?

A. I remember seeing her ; the sun was going down, but I do not say that it was set.

Q. Where was you at that time ?

A. I was on the quarter-deck, and stepped into the Captain's cabin, to attend to the message, supposing she had one to deliver.

Q. Did you hear any, and what message from the *Fox*.

A. The Captain of the *Fox* said, that it was the Admiral's desire that the ships of your division should bear down into his wake ; the word was desire, and not order.

Q. Did you hear any other words ?

A. No, only the same repeated over again to make them more distinct.

Q. Did you hear any and what answer returned by me ?

A. You replied, Very well, Sir, I have repeated their signals for that purpose.

Q. Where was I standing at that time ?

A. In the Captain's stern gallery ; the upper stern gallery.

Q. Did you go from the Captain's cabin to the quarter deck to endeavour to hear if any thing more was

was said, as the Fox shot under our lee ; and did you hear any thing more except the cheering ?

A. I observed them preparing to cheer from the Fox's fore-castle as she turned round our larboard quarter, and saw the people upon the Fox's fore-castle pointing at our rigging with seeming surprize, but heard no more of the message ; I stepped immediately back to the foot of the poop-ladder, and saw them cheer ; our people did not immediately return it, being busily employed ; and many of them took no notice of the frigate till she had cheered, but then prepared to return it.

Examined by the Court.

Q. Did you hear the Vice-Admiral return any other answer or message more than you have already related ?

A. No : I heard no other message than—It was very well, and I have repeated the signals.—I recollect that it struck me that several of the ships had bore down before the message was delivered, as I took notice of it from the quarter deck.

Q. When it was repeated from the Fox, was it by the same person, or any other voice ?

A. It was repeated ; but I cannot say whether by the same, or any other person.

Q. What space of time was there between the delivery of the message, and the cheering ?

A. The cheering from the Fox was immediately after the delivery of the message, before it was well concluded.

Q. Was it before the Vice-Admiral answered, that they cheered ?

A. No : it was after.

Q. Was there more than one cheering ?

K k

A. There

A. There was; three cheers are usual from one ship to another.

Q. Did you hear any cheering before the message was delivered?

A. No: the cheering I heard, was prior to the Fox's turning round our larboard quarter.

Q. Was there any body in the stern gallery with the Vice-Admiral.

A. Yes: there was some one, but I will not pretend to say who, I never asked.

Q. You said some of the ships were bearing down before the Fox came to you, did those ships remain in the Formidable's wake, or the Admiral's?

A. Some of them appeared to be in the Admiral's wake, the Ocean particularly.

Q. As you mentioned the Ocean, did she go a great deal from the wind?

A. As I am no seaman, I cannot answer that.

Q. What was your duty during the day of the action?

A. At the time of action, I was stationed in the gun room at the trumpet from the wheel, to deliver orders from the quarter deck to the lower deck, but had no particular duty to perform after the action ceased.

Withdrew.

Sir Hugh Palliser. Mr. President I had summoned Captain Sir John Hamilton, of the *Hector*, and Captain Keith Stewart, of the *Berwick*; but I do not think it necessary to call them, as what I wanted to prove is sufficiently done by the Captain and Master of the *Queen*; my trial has already taken up more of your time than I could wish, and therefore it becomes necessary for me to abridge the matter that remains as much as possible.

[Here

[Here the Court was cleared; but the audience being soon after re-admitted, the President informed the Prisoner, that they thought it proper to call the Captains, Sir John Hamilton, and Stewart, and Lieutenant Winckworth, and the two men mentioned by Sir Charles Douglas, who, he said, were sent for accordingly. * In the mean time, Sir Hugh Palliser desired the letters and papers of Admiral Keppel to the Secretary of the Admiralty, of the following dates, to be read, viz. that dated " Victory at sea, " five in the afternoon, 24th of July;"—that dated " 30th of July, giving an account of the action, " with the Admiral's return of killed and wounded " inclosed therein; next the narrative part of the " Admiral's Journal that accompanied the account " from the 24th to the 28th of July, inclusive; " and last of all, the Admiral's letter of the " 20th of August to Mr. Stephens:"—all which were read, containing the most flattering accounts of the conduct of the Vice Admiral of the Blue. After this, Sir Hugh Palliser desired permission of the Court to read the remaining part of his defence; the request was complied with; but the President informing him, that he thought it would be a more proper time after the Court had examined the fresh evidence they had called in.—Sir Hugh acquiesced.

[* Mr. Madgson, Master of the Victory, came into Court, and wanted some alteration to be made in the minutes, respecting his having said, " that the " Victory lay too from one to five o'clock in the afternoon;" the Judge Advocate said, that his evidence was taken down correctly and literally as he had delivered it, and therefore he supposed he had taken up his present idea from the newspaper accounts, for which the Court was not responsible. All the members agreed, that he could have no retrospect to his former evidence, and therefore he withdrew.]

ROBERT SPENCE, Cockswain of the Duke, late of the Stirling Castle, called in and sworn.

Q. Was you on board the Stirling-Castle at the time of the action of the 27th of July?

A. Yes, I was.

Q. Was you upon deck at day-light of the 28th of July?

A. I was, just before break of day.

Q. What ship was nearest to you at that time?

A. The Berwick I think; we was rather on her starboard quarter.

Q. Did you see any ship a-breast of you?

A. I saw a ship to windward of us.

Q. Give an account of what you know of that ship?

A. I took her to be a three deck ship at that time.

Q. What distance was she from you, as near as you can guess?

A. She was not so near as to be within hail; but it was so dark in the morning that I cannot justly say how near she might be.

Captain Duncan. Have you been bred always to the sea?

A. Yes, I have.

Q. What observation did you make of that ship?

A. I saw her coming first upon our starboard quarter; I saw the lights going backwards and forwards through the ports; after that I saw the ensign flying, which I could not see before.

Q. What else did you see flying?

A. I saw the flag.

Q. Where did you see the flag?

A. At the fore topmast head.

Q. What colour was it?

A. I

A. I cannot speak to the colour.

Q. Did you see the colour of the ensign?

A. I do not recollect; I took no more notice of her after she had passed us.

Q. Was it light enough to distinguish colours?

A. No.

Q. Did you know that ship to be the Formidable?

A. No.

Q. Did you see the distinguishing lights in her stern or top as she had passed?

A. No, I can't say I did.

Q. Did you see the same ship after day-light?

A. No, I did not, I took no notice of her.

Withdrew.

GEORGE AYTON, Captain's Clerk of the Stirling Castle, called in and sworn.

Q. Was you upon deck at day-light, of the 28th of July?

A. Yes, and before day-break.

Q. What ship was nearest to you at that time?

A. I understood the Berwick.

Q. At what distance?

A. I can't speak to distance, but I had a private reason for enquiring if it was the Berwick, having a friend on board her.

Q. Was she five miles five cables length, or one off?

A. She was within sight, perhaps half a mile or less; it was the darkest part of the night.

Q. Was there any three deck ships in sight just before day-break to windward of you?

A. I saw a ship to windward of us before day-break; I could not determine at that time whether she was a two or three deck ship on first seeing her.

Q. Did you afterwards determine?

A. Yes.

Q. What

Q. What ship was it?

A. I understood that she was the Formidable?

Q. How do you know she was the Formidable?

A. Only by seeing the flag at the fore top-mast head: she engaged the attention of every one on the quarter deck; I saw it was a blue flag at day-light. When she was a-breast of the Stirling-Castle I could not distinguish the colour, but I did afterwards. After that, I went to leeward to look at the French fleet, being anxious to see them one of the first.

Q. Was the weather such that you might be deceived?

A. It was cloudy, but not so as to lead me to suppose that I could be deceived.

Q. Was there light enough that you could distinguish the Berwick?

A. After getting sight of this ship in question, I never thought of the Berwick after.

Q. As the day opened more, did you pay any attention to the ship in view with the blue flag?

A. After having sight of the French fleet, I recollect its being mentioned that the ship in question had shewn her ensign.

Q. Did you see the ensign or not?

A. Yes; after seeing the blue flag at the main top-mast head.

Captain Robinson. At the main topmast head.

A. No, no, I believe it was the fore topmast head.

Captain Duncan. I am sure you have confounded the man.

Admiral Digby. I am sure the man has confounded us.

Captain Duncan. Did you see the ensign; say yes, or no?

A. I cannot pretend to say that I am so certain of seeing the blue flag at the fore topmast head. I saw
several

several ships with blue ensigns, but I am not certain whether any of those ships was the ship I had before seen or not.

Q. When that ship was upon your starboard quarter, did you see the lights of the Queen, or at that time did you see them?

A. I do not recollect at that time.

Q. Are you sure that the ship you saw had a fore top-gallant mast?

A. I presume she had, and believe so, from the recollection of the flag.

Q. Did you see the Queen with a red flag at her fore topmast head (as it was so light that you could distinguish colours) at the same time you saw the blue flag at the Formidable's fore topmast head, as you suppose?

A. I don't recollect.

Q. Did you observe whether this ship had two stern galleries or not?

A. No, my observations were not so minute.

Q. Did you take notice of any distinguishing lights on board her, poop-light or top-light?

A. No, I did not observe any.

Q. If you did not observe the two stern galleries, how did you discover that she was a three deck ship?

A. As she was so near I thought I could determine her to be a three deck ship by her height.

Q. Where was you quartered?

A. During the action I was quartered in the cabin and stern gallery, to observe signals.

Q. Did you observe any other ship pass you to windward besides this ship you supposed to be a three deck ship?

A. No. I have no recollection of any.

Q. Did you look at that ship with a glass?

A. No, I did not.

Withdrew.

Hon.

Hon. KEITH STEWART, Captain of the Berwick, called in and sworn.

Q. What time was it when the Red division formed in the rear of the Admiral on the afternoon of the 27th of July?

A. I do not know.

Q. At what time did they leave the rear to take their station in the van?

A. As the Berwick was not at that time with Sir Robert Harland, I cannot positively say.

Q. Where was the Berwick at that time?

A. She never passed the Victory on the larboard tack to the northward—at the time the signal was made for forming the line upon the starboard tack, the Berwick was then passed a-head, and took her station a-head of the Victory.

Q. At what time did the Vice-Admiral of the Red join you and take his station in the van a-head of the Victory?

A. I cannot positively say.

Q. Did you at any time in the afternoon see the Formidable?

A. Not that I recollect.

Q. What was the situation of the Berwick on the morning of the 28th about day-break?

A. In my station in the line of battle, astern of the Cumberland, and a-head of the Stirling-Castle.

Q. Did you see the Formidable at that time, and if you did, what was her situation?

A. No; at day-light I did not see her; in the middle watch I saw her on our starboard quarter, or thereabouts.

Q. Did you see her soon after day-light came on?

A. Not to pay any attention to her.

Q. What time in the middle watch?

A. I

A. I should think about two, I cannot be very certain.

Q. Was there any ship upon your weather quarter at day-light?

A. Whether the Stirling-Castle was right a-stern, or upon our weather quarter, I can't say, but she was there, or thereabouts.

Q. At the time you saw the Formidable in the middle watch; did you see the Queen also?

A. Not only then, but all night I saw her.

Q. At what distance was the Formidable from the Berwick?

A. I cannot positively say, but I could discern a flag at her fore topmast head, but I could not distinguish the colour.

Q. Had you any other reason to suppose it was the Formidable besides seeing her flag.

A. None.

Q. Did you see any other ships in the same direction with that ship you saw with a flag?

A. I have a confused idea about it, but not so good as to speak as an evidence upon it.

Q. Could you see any lights of the Victory at that time?

A. Very frequently, at the bowsprit end, but not constantly, owing to the ships between the Victory and us, which I apprehended intercepted the sight of them.

Sir Hugh Palliser. Did you continue upon deck till day-light?

A. I do not apprehend I was ever ten minutes, I am sure not half an hour, off the deck together all night.

Q. Did you at any other time take notice of the ship that you spoke of, before day-light, and make the same observation?

L 1

A. I

A. I do not remember to have seen her more than once; how long I saw her I cannot say.

Q. Is there not a possibility of your being deceived at that time of night with respect to seeing a flag at the distance she was from you, and the kind of weather it then was?

A. I thought myself quite certain that I saw a flag at the fore topmast head, and seeing Sir Robert Harland's lights a-head, I concluded, and do conclude that it was the Formidable.

Q. Did that ship go a-head of the Berwick in the night?

A. Whether she went a-head or a-stern I did not observe.

Q. Did you observe at day-light the Robuste, or any other ship of the Blue division, a-head or a-stern of the Berwick, or in any other situation?

A. No, I did not.

Sir JOHN HAMILTON, Captain of the Hector, called in and sworn.

Q. Was you one of the ships of the Red division which took her place in the rear of the Admiral on the afternoon of the 27th?

A. I was.

Q. At what time did you form in your station?

A. Between three and four o'clock to the best of my recollection.

Q. What time did you quit that station in the rear to take your station in the van?

A. Between five and six.

Q. You then passed between the Victory and the Formidable, how did they bear, and what distance were they in respect to the Hector?

A. I

A. I took no notice either of bearings or distance.

Q. What general signals were flying at that time on board the Victory and Formidable?

A. The signal for the line was flying on board the Victory, and the signal for ships bearing down; they might be on board the Formidable, but I did not look.

Q. At what time did the Hector get in her station in the van that afternoon?

A. At, or about six o'clock.

Q. Was the whole of the Red division in their stations at that time?

A. I cannot say to the whole, most of them were.

Q. Just before the Red division moved from the rear to the van, did you take notice how the Formidable bore with respect to the Hector?

A. She was wide upon the weather quarter.

Captain Robinson. Was you only half an hour in going from your station in the rear, to your station in the van?

A. It must be more than that; its impossible I could speak certain as to time.

Q. Did you, at any time, observe any general signals made on board the Formidable after the action?

A. I can't be positive; I think I saw the signal for bearing down; but the ships between the Hector and the Formidable often prevented my seeing her.

Q. Was you upon deck at day break, or before, on the morning of the 28th?

A. I was up all night, and upon deck at day-break.

Q. Did you see the Formidable at day break, and whereabouts might she be at that time?

A. I did not see her to my knowledge.

Lieutenant WINCKWORTH, late of the *Formidable*, called in and sworn.

Q. Had you any conversation with Lieutenant Hill relative to a signal book on the 27th of July ?

A. I had.

Q. At what time, and what was the conversation ?

A. I can't swear to time ; I observed Mr. Hoggart hoist two flags at the mizen peak, upon which I asked Lieutenant Hill what that signal meant ? he said he did not know ; but if I would send for the signal book, he would look : I sent for the signal book, and found it to be the signal for the line of battle a-head.

Q. What were the two flags that were hoisted at that time ?

A. The union flag, and a blue flag with a red cross under it.

Q. How long were they kept flying ?

A. I observed them flying most part of the evening ; all the evening, I believe.

Q. Can't you at all recollect whether it was late, or early in the evening, or any circumstance that may fix the time it was hoisted ?

A. I can't speak to time ; it was soon after the *Victory* had passed us to leeward on the starboard tack.

Q. On what part of the ship was you, when you asked Mr. Hill about the signal ?

A. On the forecastle.

Q. What sail had the *Formidable* set at that time ?

A. Main topsail, the mizen topsail on the cap, and the foresail set, to the best of my knowledge.

Q. Was there any gun fired when the signal was made, to your knowledge ?

A. Yes ;

A. Yes; it was that which made me look about, to see what the signal was that was hoisted.

Q. Was there one gun, or more, fired?

A. I do not recollect; one I am certain of.

Q. Was the mizen set, to the best of your recollection?

A. I believe it was; I cannot speak positively thereto.

Q. Do you recollect when the mainsail was set?

A. I cannot speak to the time?

Q. Do you remember its being set?

A. I do.

Withdrew.

[Here the whole evidence was closed on both sides.]

Sir Hugh Palliser,

Mr. President, and Gentlemen of the Court,

The examination of my witnesses being now concluded, I intreat that the Court will permit me to add, to the defence I have already offered, some considerations which either have not been submitted to your attention, or have not yet been enforced so fully as their importance may require. I feel how much I have already exercised the patience of the Court; and therefore I am extremely averse to intruding any further matter upon them. But I have so much at stake on the issue of this trial, and the activity of my enemies has been so conspicuously exerted to fix blame upon me, even where I deemed my innocence invulnerable, that should I, from a dangerous excess of confidence pass over any points, however immaterial they may sometimes have appeared to me, which my enemies have essayed to strain into importance, my silence might be misunderstood, and a conviction of the

the obviousness of the subject might be suspected to proceed from a dread of investigation.

Many questions have been asked about the practicability of my shifting my flag, and it is to the honour of the Court, that they have been so assiduous in examining to a point on which my enemies have so often laboured to ground a censure of me. In my last address to the Court I only spoke generally to this head, but I will now open my mind upon it with particularity.

The imputation for not shifting my flag refers to the 25th article of the fighting instructions, the words of which are, that "If any flag ship be disabled, the flag " may go on board any ship of his own squadron or " division."

By this instruction it is clearly optional in the flag officer to shift his flag or not, according to circumstances; and in my situation the afternoon and evening of the day of action, so foreign and inapplicable did the instruction appear to me, that I own nothing could be more distant from my thoughts at the time than the idea of shifting my flag, for which I submit to the Court's better judgment the following reasons.

The battle was over, and the signal for battle hauled down; the immediate renewal of the action by the Admiral, when I had wore close to the enemy, having been declined for prudential reasons, the propriety of which I have no right here to call in question, we were not pursuing an enemy, nor steering towards one. But the Admiral as he describes his own motions, in respect to the French, had wore and laid his stern to them. On first describing this manœuvre, which the Admiral stated to have been for collecting the ships, he stiled it an appearance to run away. But recollecting himself he afterwards on the Judge Advocate's reading

reading those words, well observed, that it was better to omit them in the minutes, and his wishes were complied with.

The enemy was not coming to attack us, but was forming to leeward of our fleet. I knew that my ship would be refitted and ready for action by day-light next morning, and every motion of the Admiral indicated to me that he did not intend to re-attack before the morning. My reasons for this opinion were many, and are already before the Court. They are, the Red division's leaving the rear between five and six o'clock, the uncollected and unrefitted state of my division at that time, and during the rest of the afternoon till night, the incomplete forming of the centre division, the distance of the French fleet from us, the late hour of the Red divisions getting into its station a-head, and the Admiral's never shortening sail till eight o'clock in the evening, to give the Formidable and Vengeance, and other crippled ships the opportunity of collecting and gaining the length of their stations in the line. These circumstances, it should also be recollected, receive the strongest confirmation from the Admiral's public letter and the Victory's log-book; besides to the shifting of my flag many things would have been essential. I must have shortened sail and laid to, which would have thrown me at a much greater distance from my station; we must have new reef'd all the tackle fully, and repaired all the geer necessary for hoisting our boats, which would have retarded the work going on for setting more sail: the ship to which I should have shifted my flag must also have laid to, and this would have kept her more a-stern and out of her station. The moving from one ship to another with my signal colours, necessaries, and attendants, is an operation which would have required, as I conceive, some considerable time.

All

All this being considered, shifting my flag might have produced great inconveniencies, by encreasing the Formidable's distance from her station, and also keeping another ship out of it;—but I know of no good purpose which could have been answered, nor do I conceive that our naval history will furnish an instance of a flag officer's shifting his flag under such circumstances.

As to the signal for the line being out, it is far from necessarily proving an intention of immediate renewal of the action: the inference in this respect from a line depends on circumstances; if the Admiral had been standing with his fleet towards the enemy, I agree that the indication would have been strong indeed, and as in that case I certainly should have concluded that his object was to hasten on an engagement before night, and without doubt I should have been forward to insure my having a proper share of the glory of a second action, either by endeavouring to bear down to engage the first ship of the enemy I could have fetched, or by shifting my flag; of which measures I should have preferred the one which would have been likely to bring me into action soonest and most effectually; this assertion I expect the more credit to, because it is in proof that early in the afternoon of the day of action, though my ship came last out of the engagement, and was the most damaged, yet I wore so instantly, and so closely to the enemy, that my ship was nearer to the French fleet to renew the fight than the Victory, or any other ship of our fleet. But the Admiral was not standing towards the enemy; he had put his stern to them, and there were all the other indications I have already described to shew that the line was forming, not for immediately renewal of the fight, but to collect all the ships for action early the next morning;
and

and here I beg leave to take notice of a circumstance which corroborated my idea of the Admiral's intention: at the late trial I proposed it as a question to a witness, whether from the motions of the Admiral, and his public letter, the witness did not infer, that there was no intention to re-engage till next day? the Admiral strenuously resisted putting such a question, and the Court overuled it. This circumstance will be found in page 33 of the trial printed by authority. But I do ask, whether any thing could more evince the Admiral's consciousness of the sense conveyed by his own words, than such a dread to hear the construction of them.

In the course of the trial it has been asked, whether I made any signal of distress? The 22d article of the Fighting Instructions explains what this signal is; and then the 23d article points out how other ships are to act, when such a signal is made by flag ships, and it is thus expressed—"If the Admiral, or any flag ship, should be in distress, and make the usual signal, the ships of the fleet are to endeavour to get as close up into a line between him and the enemy as they can, having always an eye to defend him, if the enemy should come to annoy him in that condition." But taking these two articles together, I submit to the Court, that they are only applicable to flag and other ships which meet with some material disaster during battle, and when hard pressed by the enemy; as it is plain from the terms which suppose either an enemy to be actually attacking, or to be at least advancing for the purpose.—The situation of the Formidable was not of this kind; for though she was so much a-stern, and to windward of her station, she was far from being within the meaning of the signal, the enemy not making the least attempt to annoy her,

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after she had joined the *Victory*, but on the contrary being more to leeward of the *Formidable* than the body of our fleet.

In respect to sending a frigate to the Admiral to inform him of our not being able to keep up with him, I had no frigate to send till about eight o'clock, as must appear to the Court from the evidence of Sir William Burnaby, which shews that early in the afternoon, the *Milford* being the frigate belonging to my division, was called to the *Victory* by signal, and was employed by the Admiral; but if she had not been so employed, I know not for what purpose I should have sent her to the Admiral, for I concluded that the condition of the *Formidable* was so apparent as to make a message unnecessary, especially as he omitted to throw out my ship's pennant with the pennants of the ships of my division.

I shall now take a short notice of some few other things as they severally occur to me.

I had brought to the remembrance of the Court many striking acts of approbation of my conduct by the Admiral, for the sake of contrasting them with the criminating tendency of his evidence to this Court. There wanted nothing more to expose such inconsistency, nor did I look for more, but chance has thrown other matter in my way. Sir William Burnaby's account of the Admiral's sending his compliments to me, and of the conversation about me the day after the engagement, is a new proof how well satisfied he was with my conduct at that time. If he had thought me disobedient would he have been so eager in sending his compliments to me, or so ready to exclaim with a sort of feeling for me, that I had received more damage than any of the fleet.

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It gave me singular satisfaction to see how clearly the proofs of my having my distinguishing lights burning in the night after the action, came out at last. The two men who had the care of the lights, swore with so much particularity and so convincingly, that all doubts apparently vanished in the minds of those who heard their evidence. My obligation to the honest simplicity of these men is very great; because by confirming the less positive testimony of other witnesses, it takes from my enemies a topic of abuse, which was so long slighted by me, and so industriously circulated to mislead the public opinion concerning me, that it had at length grown into a serious accusation.

I am also glad that it has been in my power to produce positive testimony of the repetition of the signals, the signal particularly for the line, whilst I was within my station.——Very impartial persons have I believe entertained a doubt on this head; but I flatter myself it is now entirely removed; I was myself quite certain that the signals were repeated, because I was particularly observant of signals the whole day; and if I thought that the fact was still doubted, I should be induced to call a witness, who could speak very positively to the point of signals, but stands in such a relation to me, and has been so constantly attendant on me in Court, that I am not willing to call him, unless there is an absolute necessity.

The dangerous state of the foremast of the *Formidable*, which was the great impediment to our carrying sufficient sail to keep up with the Admiral, is a point of great importance to the clearing my character from the imputation of not using my utmost endeavours to preserve my station. I was therefore very anxious to give the Court the fullest explanation on

this head ; and though the Carpenter spoke confusedly in respect to the time when he first knew of the rottenness of the mast, yet my Captain, and the Lieutenants who attended the fore-castle, have given such ample testimony of our having known of the rottenness of the mast at the time, that I trust the fact cannot be doubted by any unprejudiced person. I well remember being informed of the condition of the mast, and the anxiety I was under from the consequential delay in bending our fore top-sail.

On the trial of Admiral Keppel much animadversion was made on log-books ; but in the course of the present it has appeared, how very little dependence is to be had on entries in them of transactions in the time of actual engagement, or during the busy moment of preparing for further action. If I was disposed to retaliate on those who have heretofore made such ill-natured remarks on the log-books of particular ships, the logs of Admiral Keppel's and Sir Robert Harland's ships, and the examination of their several masters, furnish ample scope for the severity of animadversion. But it is not requisite for my defence to say more than that I trust the Court will not allow my innocence to be affected by such uncertain and contradictory records.

In the course of Admiral Keppel's evidence, he took care to disclaim being an accuser, and to thank God that he was not so ; but did the tenor of his evidence correspond with this declaration ? Was not his evidence criminating in almost every part ? Have not he and his friends all joined in the accusation of me ?—Have they not sealed their accusation with their testimony upon oath ?—Shall the open accusation of others, however growing out of self defence, never be forgiven, and a secret accusation vainly attempted to be sustained by the accuser's oath escape
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all censure?—It is not fit that I should pursue the comparison further, let the hearts of those who hear me feel the rest.

It is now time to leave the Court to their own judgment of the case before them. If I have omitted any thing material, their wisdom, and humanity will supply it. If I am mistaken in any of my facts, or in my reasoning upon them, their candour will correct the error, without hastily imputing to me an intentional misrepresentation.

Mr. President, and Gentlemen of the Court,

To conclude; I flatter myself, that, as at first, Admiral Keppel's commendation of me, procured me the approbation of my Sovereign, so, your honourable acquittal of me now, will dissipate the cloud of prejudice, and restore me to the good opinion of my Country.

Wednesday, April 5.

At nine the Court-Martial assembled, and the doors were immediately shut. They continued in debate till one o'clock, when strangers were admitted, and the following resolution of the Court was read by the Judge Advocate:

“ At a Court-Martial assembled on board the Sandwich, in Portsmouth Harbour, on the 12th day of April, pursuant to an order of the Admiralty, directed to George Darby, Esq. Vice-Admiral of the Blue, and second in command in Portsmouth Harbour, and held by adjournments from day to day, Sundays excepted, to enquire into the conduct of Vice-Admiral Sir Hugh Palliser,

PRESENT,

P R E S E N T,**Vice-Admiral George Darby, President.****Rear Admiral Matthew Digby.****Captain Sir Chaloner Ogle,****Kempensfelt.****Peyton,****Bayne,****Robinson.****Duncan,****Goodhall.****Cranston, to the end of the third
day, and then discontinued.****Linzee.****Colpoys.****Walters.****George Jackson, Judge Advocate.**

“ The court having inquired into the conduct of
 “ Vice-Admiral Sir Hugh Palliser, on the 27th and
 “ 28th days of July, heard evidence on the same,
 “ are of opinion that the behaviour of the Vice-
 “ Admiral of the Blue was, in many instances, on
 “ those days, highly meritorious and exemplary.
 “ But that he was blameable for not making the di-
 “ stressed situation of his ship known to the Admi-
 “ ral, either by the Fox or otherways. Yet as he is
 “ censurable in no other part of his conduct, the
 “ court are of opinion he ought, notwithstanding
 “ that, to be acquitted, and he is acquitted accord-
 “ ingly.”

On this the boats crews of the Formidable, Cum-
 berland, and others in the Court, sat up three
 cheers.

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The President delivered to the Vice-Admiral his sword, with this short address:

“ Sir,

“ I am directed by the Court to return you your
“ sword.”

F I N I S.